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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EMMA ALVARADO, on behalf of  
herself and on behalf of all others  
similarly situated,  
  
Plaintiff,

vs.

MICROSOFT CORPORATION, a  
Washington corporation,  
and DOES 1 through 100, inclusive,  
  
Defendants.

Case No. C 09-\_\_\_\_\_

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE WASHINGTON UNFAIR BUSINESS PRACTICES ACT;
- (2) VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT; AND
- (3) DECLARATORY RELIEF UNDER THE DECLARATORY JUDGMENT ACT.

DEMAND FOR JURY TRIAL

Plaintiff Emma Alvarado (“Plaintiff”) makes all allegations in this Complaint based upon information and belief, except those allegations that pertain to Plaintiff, which are based on personal knowledge. Plaintiff’s information and belief are based upon, *inter alia*, Plaintiff’s own investigation and the investigation conducted by Plaintiff’s attorneys. Each allegation in this complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

**NATURE OF THE ACTION**

Plaintiff brings this complaint individually on behalf of herself and on behalf of a class of persons similarly situated against defendant Microsoft Corporation (“Microsoft”) pursuant

1 to, *inter alia*, the Washington Unfair Business Practices Act, the Washington Consumer  
2 Protection Act and the Declaratory Judgment Act. Plaintiff seeks to: (a) recover treble  
3 damages for injuries which Plaintiff and the members of the class have sustained as a result of  
4 the wrongful actions and conduct of Microsoft as described herein, (b) require Microsoft to  
5 disgorge and restore all monies wrongfully obtained by it; and (c) enjoin Microsoft from  
6 continuing to engage in the wrongful conduct alleged herein.

7 **JURISDICTION AND VENUE**

8 1. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because  
9 Microsoft resides in this judicial district.

10 2. This Court has jurisdiction over the claims alleged in this action because  
11 Microsoft transacts substantial business within, and is subject to personal jurisdiction in, this  
12 judicial district, and because a substantial part of the events giving rise to the claims asserted  
13 herein took place in this judicial district. The anti-competitive acts described herein have a  
14 direct effect on consumers nationwide, including those residing within the State of  
15 Washington, who purchased computers with the Windows Vista operating system (“Vista”),  
16 and Microsoft’s illegal conduct, as alleged herein, has resulted in substantial restraint of trade  
17 in the State of Washington.

18 3. Jurisdiction is specifically conferred on this Court by various federal statutes  
19 including, but not limited to, 28 U.S.C. § 1332(d), as amended by the CLASS ACTION FAIRNESS  
20 ACT OF 2005, because Plaintiff and numerous other members of the proposed class are citizens  
21 of states other than the State of Washington and because the amount in controversy exceeds  
22 \$5,000,000.

23 **PLAINTIFF**

24 4. Plaintiff is a resident of the County of Los Angeles in the State of California.  
25 On June 20, 2008, Plaintiff purchased a personal computer with a pre-installed Windows Vista  
26 Business operating system from Lenovo Group Limited, for her own personal use and not for  
27 resale. At the time of her purchase, Plaintiff was required to pay an additional \$59.25 in order

1 to “downgrade” her operating system to Windows XP® Professional. Plaintiff brings this  
2 action as an aggrieved party individually in her own right and as a representative of all other  
3 persons similarly situated.

4 **DEFENDANTS**

5 5. Microsoft is the world’s largest seller of operating systems for personal  
6 computers (“PC”). Microsoft is a corporation organized and existing under the laws of the  
7 State of Washington, licensed to do and doing business within and throughout the State of  
8 Washington, with its corporate headquarters located in Redmond, Washington, at 1 Microsoft  
9 Way, Redmond, Washington 98052.

10 6. The true names and capacities of the defendants sued herein as Does 1 through  
11 100, inclusive, (“the Doe Defendants”) are unknown to Plaintiff, who therefore sues these  
12 defendants by such fictitious names. Plaintiff will amend this complaint to allege the true  
13 names and capacities of the Doe Defendants at such time as they have been ascertained. The  
14 Doe Defendants are the persons, firms and corporations who have participated with Microsoft  
15 in the wrongdoings complained of and have performed acts and made statements in  
16 furtherance thereof. The Doe Defendants acted as co-conspirators and aided and abetted, or  
17 participated with, Microsoft in the commission of the wrongful acts alleged herein or  
18 otherwise caused the damages suffered by Plaintiff and the other members of the class.

19 7. As used herein, the term “Defendants” shall mean and refer to Microsoft and  
20 the Doe Defendants together.

21 **ALLEGATIONS OF CONCERTED ACTION**

22 8. At all relevant times mentioned herein, Defendants pursued a common course  
23 of conduct, acted in concert and conspired with one another to accomplish the offenses  
24 complained of herein, and have performed acts and made statements in furtherance thereof. In  
25 addition to the wrongful conduct alleged herein as giving rise to the primary liability,  
26 Defendants further aided and abetted and knowingly assisted each other in perpetuating the  
27 wrongdoing complained of herein.



1 13. Plaintiff's claims are typical of the claims of the other Class members, as  
2 required by Rule 23(a)(3), because Plaintiff and each Class member purchased computers with  
3 Windows Vista and paid fees to downgrade to Windows XP.

4 14. Common questions of law and fact exist as to all Class members, as required by  
5 Rule 23(a)(2), and predominate over any individual questions.

6 15. The common questions include, but are not limited to, the following:  
7 a. whether Defendants' actions and conduct violate state antitrust law;  
8 b. the nature of Defendants' actions and conduct;  
9 c. the effect of Defendants' actions on trade and commerce within the  
10 United States; and  
11 d. the type and pattern of damages sustained by Plaintiff and the Class as a  
12 result of the wrongful action and conduct of Defendants.

13 16. A class action is superior to other available methods for the fair and efficient  
14 adjudication of the claims asserted in this action under Rule 23(b)(3) because:  
15 a. the expense and burden of individual litigation make it economically  
16 unfeasible for Class members to seek redress for their "negative value"  
17 claims other than through the procedure of a class action;  
18 b. if separate actions were to be brought individually by each Class  
19 member, the resulting duplicity of lawsuits would cause undue hardship  
20 and expense to the Court and the litigants by necessitating multiple trials  
21 of similar factual issues;  
22 c. prosecuting separate individual actions would create a risk of  
23 inconsistent adjudications of similar factual issues; and  
24 d. absent a class action, Defendants likely would retain the benefits of their  
25 wrongdoing, and there would be a failure of justice.

26 17. In the alternative, this action is certifiable under the provisions of  
27 Rules 23(b)(1) and/or 23(b)(2) because:

- 1 a. prosecuting separate actions by individual Class members would create  
2 a risk of inconsistent or varying adjudications with respect to individual  
3 class members that would establish incompatible standards of conduct  
4 for Defendants;
- 5 b. prosecuting separate actions by individual Class members would create  
6 a risk of adjudications with respect to them that would, as a practical  
7 matter, be dispositive of the interests of the other Class members not  
8 parties to the adjudications, or substantially impair or impede their  
9 ability to protect their interests; and
- 10 c. Defendants have acted or refused to act on grounds generally applicable  
11 to the Class, thereby making appropriate final injunctive relief or  
12 corresponding declaratory relief with respect to the Class, and  
13 necessitating that any such relief be extended to Class members on a  
14 mandatory, class-wide basis.

15 18. Plaintiff is aware of no difficulty that will be encountered in the management of  
16 this litigation that should preclude its certification as a class action.

17 19. Class members' names and addresses are available from Defendants' records.  
18 Notice can be provided to Class members via first class mail or otherwise, using techniques  
19 and a form of notice similar to those customarily used in class actions arising under federal  
20 law.

21 20. Plaintiff has incurred, and during the pendency of this action will incur,  
22 attorneys' fees and expenses. Such attorneys' fees and expenses are necessary for prosecuting  
23 this action and will result in a benefit to the Class.

24 **NATURE OF DEFENDANTS' ANTI-COMPETITIVE ACTIVITIES**

25 21. On or about January 31, 2007, Microsoft publicly released the first version of  
26 the Windows Vista operating system.

1 22. Microsoft licenses its Windows operating systems to original equipment  
2 manufacturers (“OEMs”) of PCs, such as Lenovo, IBM and Dell Computer Corporation.  
3 OEMs typically install the Vista operating system (“Vista”) onto their PCs and sell the PCs to  
4 consumers for a single price that includes the pre-installed Vista operating system. As the sole  
5 licensor of Windows Vista, Microsoft enjoys vast power over OEMs which it has used and  
6 continues to use to stifle competition.

7 23. Since the introduction of Vista, Microsoft has effectively eliminated  
8 competition in the operating system PC market and created a monopoly position for itself in  
9 that market. Currently, there is no operating system software for Intel-compatible PC’s that a  
10 significant percentage of consumers could substitute for Vista without incurring substantial  
11 costs.

12 24. Microsoft has used its power to coerce OEMs, internet access providers  
13 (“IAPs”) and others into agreeing to restrictive and anti-competitive licensing terms for its  
14 Windows XP operating system in order to stifle competition in the market. Microsoft did so in  
15 order to maintain, protect, and extend its market power in operating systems software into the  
16 next generation of personal computing, to lessen competition, to promote Vista and to enhance  
17 its monopoly position.

18 25. Consumers have encountered numerous problems using the Vista operating  
19 system, and these problems have been widely publicized in various media outlets. As a result,  
20 many consumers would prefer to purchase a new computer pre-installed with the Windows XP  
21 operating system or at least *not* pre-installed with the Vista operating system. However,  
22 Microsoft has used its market power to take advantage of consumer demand for the Windows  
23 XP operating system by requiring consumers to purchase computers pre-installed with the  
24 Vista operating system and to pay additional sums to “downgrade” to the Windows XP  
25 operating system.

26 26. Initially, Microsoft made this “downgrade” option available to consumers at the  
27 cost of \$104.00 and for a limited period of time, until June 30, 2008. Subsequently, Microsoft

1 extended the time period until January 31, 2009, and, more recently, extended the time period  
2 until July 31, 2009. These extensions were likely due to the tremendous profits that Microsoft  
3 has reaped from its “downgrade” option. To date, nearly one in three consumers purchasing a  
4 new computer has paid to downgrade the operating system from Vista to Windows XP.

#### 5 **EFFECT ON TRADE AND COMMERCE**

6 27. As alleged herein, Defendants have engaged in predatory and anti-competitive  
7 activities in order to secure a monopoly position in the market for licensing of Intel-compatible  
8 PC operating systems software (“the Relevant Market”).

9 28. The Relevant Market is worth more than \$50 billion annually in the U.S. alone.  
10 As of October 2008, Microsoft controls approximately 90% of the Relevant Market. On  
11 July 18, 2007, Microsoft announced that it had sold more than 180 million Vista licenses  
12 which would equate to gross sales revenues of between \$30 and \$60 billion dollars from Vista  
13 licenses. However, these figures are believed to include Vista licenses that are downgraded to  
14 Windows XP.

15 29. Defendants willfully acquired monopoly power and have maintained such  
16 monopoly control over the Relevant Market by suppressing competition in the Intel-  
17 compatible PC operating-systems-software market through restrictive and exclusionary  
18 conduct. Defendants suppressed competition with the specific intent of acquiring and  
19 obtaining such monopoly power.

20 30. Plaintiff and other members of the Class have suffered injury to their property  
21 as a result of Defendants’ monopoly power and anti-competitive activities because they have  
22 been, and continue to be, forced to purchase Vista rather than alternative operating systems  
23 software.

24 31. Plaintiff and other members of the Class also have suffered injury to their  
25 business and property as a result of Defendants’ monopoly power and anti-competitive  
26 activities because they have been, and continue to be, forced to pay supra-competitive prices  
27 for Windows XP: that is, they have been forced to pay substantially more to acquire the

1 Windows XP operating system than they would have to pay in a competitive marketplace in  
2 which there were available alternative operating systems.

3 **FIRST CLAIM FOR RELIEF**

4 (For Violations of the *Washington Unfair Business Practices Act*)

5 32. Plaintiff repeats and incorporates herein by reference, as though set forth at  
6 length, the allegations contained in paragraphs 1 through 31 inclusive, above.

7 33. Beginning at a time presently unknown to Plaintiff, and continuing through the  
8 present, Defendants entered into and operated a continuing unlawful trust in restraint of trade  
9 and commerce. This trust consisted of a continuing combination, agreement, conspiracy,  
10 and/or understanding between and among Defendants, OEMs, IAPs, and others with respect to  
11 the licensing and sale of the Windows Vista operating system within the State of Washington  
12 and throughout the United States.

13 34. The unlawful trust has had the following effects, among others:

14 a. competition in the sale of Intel-compatible PC operating systems  
15 software has been suppressed, restrained, and/or eliminated;

16 b. prices of the Windows Vista operating system have been fixed,  
17 maintained and stabilized at supra-competitive levels;

18 c. prices of the Windows XP operating system have been fixed,  
19 maintained and stabilized at supra-competitive levels and customers have been forced to  
20 purchase the most expensive version of this program in order to “downgrade” from the  
21 Windows Vista operating system; and

22 d. Microsoft prohibited its OEM's (Dell/HP/Sony, etc.) from selling new  
23 computers with Windows XP operating system pre-installed.

24 35. The conduct of Defendants as alleged herein constitutes a violation of the  
25 *Washington Unfair Business Practices Act*.

26 36. As a direct and proximate result of the anti-competitive practices described  
27 herein, Plaintiff and the members of the Class have been injured in their business or property

1 within the meaning of Section 19.86.090 of the *Washington Unfair Business Practices Act*  
2 because they have been forced to purchase Vista rather than alternative operating systems  
3 software and have been required to pay additional amounts of money to “downgrade” to the  
4 Windows XP operating system.

5 37. Unless Defendants are enjoined from continuing to engage in this unlawful  
6 trust, Plaintiff and other members of the Class will continue to be injured and damaged by  
7 Defendants’ anti-competitive activities.

8 38. As a result of Defendants’ acts or practices, pursuant to RCW 19.86.090,  
9 Plaintiff and the Class are entitled to recover treble damages, reasonable attorneys’ fees, and  
10 costs of suit.

11 **SECOND CLAIM FOR RELIEF**

12 (Violations of the *Washington Consumer Protection Act*)

13 39. Plaintiff repeats and incorporates herein by reference, as though set forth at  
14 length, the allegations contained in paragraphs 1 through 31 inclusive, above.

15 40. By engaging in the above-described acts and practices, Defendants have  
16 committed one or more violations of the *Washington Consumer Protection Act* Washington  
17 Revised Code, Section 19.86.010, *et seq.*

18 41. Defendants’ acts or practices repeatedly occurred in the conduct of Defendants’  
19 trade or business as part of a pattern or generalized course of conduct, and were capable of  
20 deceiving a substantial portion of the public.

21 42. The acts and practices of Defendants are unfair, even if not unlawful, because  
22 they have resulted in the general public having to pay supra-competitive prices for the  
23 Windows XP operating systems software.

24 43. The acts and practices of Defendants are unlawful because they violate, *inter*  
25 *alia*, *Washington Business Practices Act*, Section 19.86.090.

26 44. Defendants’ acts and practices are continuing in nature.  
27

1 45. As a direct and proximate result of Defendants' acts or practices, Plaintiff and  
2 the Class have suffered actual damages in that Plaintiff and Class members have been forced  
3 to purchase Vista rather than alternative operating systems software and have been required to  
4 pay additional amounts of money to "downgrade" to the Windows XP operating system.

5 46. Defendants' repeated acts or practices have affected numerous consumers both  
6 prior to and arising out of the transactions involving Plaintiff. Further, Defendants' acts or  
7 practices continue to pose a real and substantial potential for repetition causing additional  
8 injury likely to affect a substantial number of consumers.

9 47. Unless Defendants are enjoined from continuing to engage in these unfair and  
10 unlawful business practices, Plaintiff and other members of the Class will continue to be  
11 injured and damaged by Defendants' unfair competition.

12 48. As a result of Defendants' acts or practices, pursuant to RCW 19.86.090,  
13 Plaintiff and the Class are entitled to recover treble damages, reasonable attorneys' fees, and  
14 costs of suit.

15 **THIRD CLAIM FOR RELIEF**

16 (Declaratory Relief Under the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*)

17 49. Plaintiff repeats and incorporates herein by reference, as though set forth at  
18 length, the allegations contained in paragraphs 1 through 31 inclusive, above.

19 50. An actual controversy has arisen and now exists between Plaintiff and other  
20 members of the Class, on one hand, and Defendants, on the other hand, concerning their  
21 respective rights and duties in that Plaintiff and the other members of the Class contend that  
22 Defendants' activities alleged herein are anti-competitive and have resulted in a restraint of  
23 trade while Defendants contend that their actions are lawful and proper in all respects.

24 51. A judicial declaration is necessary and appropriate at this time under the  
25 circumstances presented, in order that Plaintiff and the other members of the Class may  
26 ascertain their rights and duties with respect to the activities of Defendants alleged herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of herself and the Class defined herein, prays for  
3 judgment and relief as follows:

4 **ON THE FIRST CLAIM FOR RELIEF**

5 1. That Plaintiff be awarded compensatory damages in an amount according to  
6 proof at trial;

7 2. That the damages awarded be trebled pursuant to the *Washington Unfair*  
8 *Business Practices Act* Section 19.86.090;

9 3. That Defendants be permanently enjoined and restrained from engaging the  
10 anti-competitive actives alleged herein; and

11 4. That Plaintiff be awarded her reasonable attorney's fees, together with her costs  
12 of suit, pursuant to the *Washington Unfair Business Practices Act* Section 19.86.090.

13 **ON THE SECOND CLAIM FOR RELIEF**

14 5. That Plaintiff be awarded compensatory damages in an amount according to  
15 proof at trial;

16 6. That the damages awarded be trebled pursuant to the *Washington Unfair*  
17 *Business Practices Act* Section 19.86.090;

18 7. That Defendants be permanently enjoined and restrained from engaging in the  
19 unfair and unlawful business practices alleged herein; and

20 8. That Plaintiff be awarded her reasonable attorneys' fees, together with her costs  
21 of suit, pursuant to the *Washington Unfair Business Practices Act* Section 19.86.090.

22 **ON THE THIRD CLAIM FOR RELIEF**

23 9. That this Court declare that the activities of Defendants as alleged herein are  
24 unfair and unlawful and result in an illegal restraint on trade.

25 **ON ALL CLAIMS FOR RELIEF**

26 10. That Plaintiff and the Class be awarded reasonable attorneys' fees, expenses  
27 and costs of suit; and

1 11. That Plaintiff and the Class be granted such other and further relief as the Court  
2 deems just and proper.

3 Dated: February 11, 2009

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