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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

JOHN DOES 1–10 using IP address
173.10.29.66,

Defendants.

No.

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendants John Does 1–10 using IP address 173.10.29.66 (“Defendants”), alleging as follows:

I. INTRODUCTION

1. This is an action for copyright and trademark infringement of certain copyrights and trademarks associated with Microsoft software. This action arises from the unauthorized copying of Microsoft’s copyrighted software and the trademarks displayed in such software.

II. PARTIES

2. Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer software, among other products and services.

3. The true identities of Defendants are not presently known to Microsoft. On information and belief, Defendants are in possession or control of the Internet Protocol (“IP”)

1 address 173.10.29.66, which was used by one or more Defendants in furtherance of the unlawful
2 conduct alleged herein.

3 **III. JURISDICTION & VENUE**

4 4. The Court has subject matter jurisdiction over Microsoft's claims for copyright
5 and trademark infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C.
6 §§ 1331 and 1338(a).

7 5. The Court has personal jurisdiction over Defendants because they purposefully
8 directed their unlawful activities at Washington, and Microsoft's claims arise from those
9 activities. Defendants activated and attempted to activate at least several thousand copies of
10 Microsoft software, much of which was pirated and unlicensed. During the software activation
11 process, Defendants contacted Microsoft activation servers in Washington thousands of times
12 from 2014 to 2017, and transmitted detailed information to those servers in order to activate the
13 software. Defendants' contact with Microsoft's activation servers was voluntary, intentional
14 and comprised a routine part of Defendants' installation of software. In addition, Defendants
15 expressly aimed their conduct at Washington because they (1) had actual or constructive
16 knowledge of Microsoft's intellectual property rights (including Microsoft's registered
17 copyrights and trademarks) and Microsoft's residence in Washington where it controls its
18 exclusive rights in its trademarks and copyrights; (2) acted, at a minimum, with willful blindness
19 to, or in reckless disregard of, Microsoft's rights, and in reckless disregard of the likelihood that
20 it was infringing Microsoft's copyrights; and (3) knew or should have known that their conduct
21 would cause harm to Microsoft in Washington, because it is foreseeable that infringement of
22 Microsoft's rights would cause harm likely to be suffered in Washington, the state of its
23 residence, incorporation, and headquarters. *See Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*,
24 704 F.3d 668 (9th Cir. 2012).

25 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because
26 Defendants are subject to personal jurisdiction in the Western District of Washington. *See*
27 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010). Venue is also

1 proper in this district pursuant to 28 U.S.C. 1391(b) because a substantial part of the events
2 giving rise to the claims occurred in the Western District of Washington.

3 7. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle Division
4 is proper because the claims arose in this Division, where (a) Microsoft resides, (b) the injuries
5 giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

6 IV. FACTS COMMON TO ALL CLAIMS

7 A. The Global Problem of Software Piracy

8 8. Software developers lose billions of dollars in annual revenue from software
9 piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of
10 copyrighted and trademarked software and related components. In 2015, the commercial value
11 of pirated software in the United States exceeded \$10 billion.

12 9. One prominent form of software piracy is known as “hard-disk loading,” the
13 unauthorized commercial copying and installation of infringing software on devices which are
14 often sold in competition with, and often for lower prices than, devices pre-installed with legally
15 licensed copies of software.

16 10. Software developers, like Microsoft, are not the only victims of software piracy.
17 Consumers are also victims, as they are often deceived by distributors of pirated software who
18 go to great lengths to make the software appear genuine. These customers may unwittingly
19 expose themselves to security risks associated with the use of pirated software. *See* Federal
20 Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1,
21 2013, at <https://www.fbi.gov/news/stories/pirated-software-may-contain-malware1> (noting the
22 relatively greater risk that pirated software is infected with malicious software, or “malware,”
23 which can be used to record keystrokes and thus capture sensitive information such as user
24 names, passwords, and Social Security numbers).

25 B. Microsoft’s Software and Intellectual Property

26 11. Microsoft develops, advertises, markets, distributes, and licenses a number of
27 computer software programs. Microsoft’s software programs are recorded on distributable

1 media, such as DVDs, or are made available for download through various authorized
2 distribution channels.

3 12. **Windows 10:** Microsoft has developed, advertises, markets, distributes, and
4 licenses a computer operating system called Microsoft Windows 10 (“Windows 10”). Windows
5 10 is available in a number of different versions, each of which includes certain combinations of
6 products, programs, and features. Versions of Windows 10 include Windows 10 and Windows
7 10 Professional. Microsoft holds a valid copyright in Windows 10 Professional, the most
8 expansive version of Windows 10. As a result, Microsoft’s copyright in Windows 10
9 Professional encompasses all other versions of Windows 10. Microsoft’s copyright in Windows
10 10 Professional was duly and properly registered with the United States Copyright Office. A
11 true and correct copy of the Registration Certificate for Microsoft Windows 10 Professional,
12 bearing the number TX 8-058-526, is attached as Exhibit 1.

13 13. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and
14 licenses a computer operating system called Microsoft Windows 8.1 (“Windows 8.1”).
15 Windows 8.1 is available in a number of different versions, each of which includes certain
16 combinations of products, programs, and features. Versions of Windows 8.1 include Windows 8
17 and Windows 8.1 Professional. Microsoft holds a valid copyright in Windows 8.1 Professional,
18 the most expansive version of Windows 8.1. As a result, Microsoft’s copyright in Windows 8.1
19 Professional encompasses all other versions of Windows 8.1. Microsoft’s copyright in Windows
20 8.1 Professional was duly and properly registered with the United States Copyright Office. A
21 true and correct copy of the Registration Certificate for Microsoft Windows 8 Professional,
22 bearing the number TX 7-740-672, is attached as Exhibit 2.

23 14. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and
24 licenses a computer operating system called Microsoft Windows 8 (“Windows 8”). Windows 8
25 is available in a number of different versions, each of which includes certain combinations of
26 products, programs, and features. Versions of Windows 8 include Windows 8 and Windows 8
27 Professional. Microsoft holds a valid copyright in Windows 8 Professional, the most expansive

1 version of Windows 8. As a result, Microsoft's copyright in Windows 8 Professional
2 encompasses all other versions of Windows 8. Microsoft's copyright in Windows 8 Professional
3 was duly and properly registered with the United States Copyright Office. A true and correct
4 copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number
5 TX 7-601-008, is attached as Exhibit 3.

6 15. **Windows Vista:** Microsoft has developed, advertises, markets, distributes, and
7 licenses a computer operating system called Microsoft Windows Vista ("Windows Vista").
8 Windows Vista is available in a number of different versions, each of which includes certain
9 combinations of products, programs, and features. Versions of Windows Vista include
10 Windows Vista Ultimate, Windows Vista Home Premium, and Windows Vista Home Basic.
11 Microsoft holds a valid copyright in Windows Vista Ultimate, the most expansive version of
12 Windows Vista. As a result, Microsoft's copyright in Windows Vista Ultimate encompasses all
13 other versions of Windows Vista. Microsoft's copyright in Windows Vista Ultimate was duly
14 and properly registered with the United States Copyright Office. A true and correct copy of the
15 Registration Certificate for Windows Vista Ultimate, bearing the number TX 6-508-905, is
16 attached as Exhibit 4.

17 16. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and
18 licenses a computer operating system called Microsoft Windows 7 ("Windows 7"). Windows 7
19 is available in a number of different versions including Windows 7 Ultimate, Windows 7
20 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid
21 copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result,
22 Microsoft's copyright in Windows 7 Ultimate encompasses all other versions of Windows 7.
23 Microsoft's copyright in Windows 7 Ultimate was duly and properly registered with the United
24 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
25 Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 5.

26 17. **Microsoft Office 365:** Microsoft has developed, advertises, markets, distributes,
27 and licenses a suite of productivity software for business, home, and educational use called

1 Microsoft Office 365 (“Office 365”). Office 365 is available in a number of different versions,
2 each of which includes certain combinations of products, programs, and features. Versions of
3 Office 365 include, but are not limited to, Office 365 Business, Office 365 Business Essentials,
4 Office 365 Business Premium, Office 365 ProPlus, Office 365 Enterprise E1, Office 365
5 Enterprise E3, Office 365 Enterprise E5, Office Professional 2016, Office Professional Home
6 and Business 2016, Office Home and Business 2016, Office Home and Student 2016, and Office
7 Professional Plus 2016. Microsoft holds a valid copyright in Office 365 ProPlus 2016, the most
8 expansive version of Office 365, and this copyright encompasses all versions of Office 365,
9 including Office Professional 2016. Microsoft’s copyright in Office 365 ProPlus 2016 was duly
10 and properly registered with the United States Copyright Office, bearing the number TX 8-097-
11 602, and is attached hereto as Exhibit 6.

12 18. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and
13 licenses a computer operating system called Microsoft Office 2013 (“Office 2013”). Office 2013
14 is available in a number of different versions, each of which includes certain combinations of
15 products, programs, and features. Versions of Office 2013 include Office 2013 Professional,
16 Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft holds a valid
17 copyright in Office 2013 Professional Plus, the most expansive version of Office 2013. As a
18 result, Microsoft’s copyright in Office 2013 Professional encompasses all other versions of
19 Office 2013. Microsoft’s copyright in Office 2010 Professional was duly and properly registered
20 with the United States Copyright Office. A true and correct copy of the Registration Certificate
21 for Office 2013 Professional, bearing the number TX 7-649-882, is attached as Exhibit 7.

22 19. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and
23 licenses a computer operating system called Microsoft Office 2010 (“Office 2010”). Office 2010
24 is available in a number of different versions, each of which includes certain combinations of
25 products, programs, and features. Versions of Office 2010 include Office 2010 Professional,
26 Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010 Home and
27 Student. Microsoft holds a valid copyright in Office 2010 Professional Plus, the most expansive

1 version of Office 2010. As a result, Microsoft's copyright in Office 2010 Professional Plus
2 encompasses all other versions of Office 2010. Microsoft's copyright in Office 2010
3 Professional Plus was duly and properly registered with the United States Copyright Office. A
4 true and correct copy of the Registration Certificate for Office 2010 Professional Plus, bearing
5 the number TX 7-151-840, is attached as Exhibit 8.

6 20. **Windows Server 2012:** Microsoft has developed, advertises, markets,
7 distributes, and licenses a line of server operating system called Windows Server 2012.
8 Windows Server 2012 is available in a number of different versions, each of which includes
9 certain combinations of products, programs, and features. Versions of Windows Server 2012
10 include Windows Server Standard 2012 R2, Windows Server Standard 2012, Windows Web
11 Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid copyright in Windows
12 Server, which encompasses all versions of Windows Server. Microsoft's copyright in Windows
13 Server was duly and properly registered with the United States Copyright Office. A true and
14 correct copy of the Registration Certificate for Windows Server, bearing the number TX 7-622-
15 123, is attached as Exhibit 9.

16 21. **Project Standard 2010:** Microsoft has developed, advertises, markets,
17 distributes, and licenses a line of project management software called Project 2010. Project 2010
18 is available in two versions, each of which includes certain combinations of products, programs,
19 and features. Versions of Project 2010 include Project Standard 2010 and Project Professional
20 2010. Microsoft holds a valid copyright in Project Professional 2010, which encompasses both
21 Project Standard 2010 and Project Professional 2010. Microsoft's copyright in Project
22 Professional 2010 was duly and properly registered with the United States Copyright Office. A
23 true and correct copy of the Registration Certificate for Project Professional 2010, bearing the
24 number TX 7-348-992, is attached as Exhibit 10.

25 22. Microsoft has also duly and properly registered a number of trademarks and
26 service marks in the United States Patent and Trademark Office on the Principal Register,
27 including without limitation:

- 1 (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for
2 computer programs and computer programming services;
- 3 (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs
4 and manuals sold as a unit;
- 5 (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for
6 computer software;
- 7 (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for
8 computer software;
- 9 (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer
10 productivity software;
- 11 (f) "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299, for computer
12 productivity software;
- 13 (g) "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826, for computer
14 productivity software;
- 15 (h) "ACCESS," Trademark Registration No. 3,238,869, for computer database
16 management software;
- 17 (i) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for
18 computer database management software;
- 19 (j) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,365,955 for
20 computer database management software;
- 21 (k) "CAMERA TILE," Trademark Registration No. 4,415,986 for computer software
22 for accessing and managing camera functions;
- 23 (l) "CHARM BAR," Trademark Registration No. 4,489,348 for computer software
24 operating system;
- 25 (m) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet
26 software;
- 27

- 1 (n) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558 for
2 computer spreadsheet software;
- 3 (o) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451 for
4 computer spreadsheet software;
- 5 (p) "GAMES TILE," Trademark Registration No. 4,444,995 for computer software
6 enabling access to online games;
- 7 (q) "MAPS TILE," Trademark Registration No. 4,415,985 for computer software for
8 mapping and directions;
- 9 (r) "MESSAGING TILE," Trademark Registration No. 4,426,631 for computer
10 software for text and multimedia messaging;
- 11 (s) "MUSIC TILE," Trademark Registration No. 4,426,630 for computer software
12 for downloading and listening to music and other audio content;
- 13 (t) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for
14 use in note taking;
- 15 (u) "ONENOTE LAUNCH ICON 2010," Trademark Registration No 3,905,559 for
16 computer software for use in note taking;
- 17 (v) "ONENOTE LAUNCH ICON 2012," Trademark Registration No 4,351,584 for
18 computer software for use in note taking;
- 19 (w) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs
20 for providing enhanced electronic mail and scheduling capabilities;
- 21 (x) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for
22 computer programs for providing enhanced electronic mail and scheduling capabilities;
- 23 (y) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No. 4,355,446, for
24 computer programs for providing enhanced electronic mail and scheduling capabilities;
- 25 (z) "POWERPOINT," Trademark Registration No. 1,475,795, for computer software
26 programs for creating presentations, graphics and videos;
- 27

1 (aa) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No.
2 3,905,561, for computer software programs for creating presentations, graphics and
3 videos;

4 (bb) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No.
5 4,385,388, for computer software programs for creating presentations, graphics and
6 videos;

7 (cc) "PROJECT LAUNCH ICON (2010)," Trademark Registration No. 3,938,763,
8 for project management software;

9 (dd) "PUBLISHER LAUNCH ICON," Trademark Registration No. 3,909,142 for
10 desktop publishing software;

11 (ee) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No. 4,355,448
12 for desktop publishing software;

13 (ff) "SPORTS TILE," Trademark Registration No. 4,426,632 for computer software
14 for viewing information and content about sports;

15 (gg) "VIDEO TILE," Trademark Registration No. 4,412,218 for computer software
16 for downloading and viewing video content;

17 (hh) "WINDOWS 8 PACKAGING," Trademark Registration No. 4,476,005, for
18 computer operating system software;

19 (ii) "WINDOWS SERVER," Trademark Registration No. 3,056,149, for operating
20 system, computer and utility programs;

21 (jj) "WINDOWS STORE TILE," Trademark Registration No. 4,552,497, for
22 operating system software;

23 (kk) "WINDOWS VISTA," Trademark Registration No. 3,424,198, for providing
24 online information concerning computer operating system programs, and providing
25 online technical support in the field of computer operating systems;

26 (ll) "WINDOWS VISTA," Trademark Registration No. 3,235,107, for operating
27 system programs;

1 (mm) “WORD LAUNCH ICON 2010,” Trademark Registration No. 3,909,143, for
2 word processing software; and

3 (nn) “WORD LAUNCH ICON 2012,” Trademark Registration No. 4,355,444 for
4 word processing software.

5 True and correct copies of the Trademark Registrations for (a) through (nn) above are
6 attached as Exhibits 11 through 50, respectively.

7 **C. Microsoft’s Distribution Channels for Software**

8 23. Microsoft distributes its software through a number of distribution channels,
9 including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and
10 refurbisher channels.

11 24. The Original Equipment Manufacturer (“OEM”) distribution channel is one
12 through which Microsoft software is distributed to computer and device manufacturers called
13 OEMs. OEMs customarily pre-install software on the devices they build including, most
14 commonly, the Microsoft Windows operating system.

15 25. The OEM distribution channel involves sub-channels that supply Microsoft
16 software to different categories of OEMs. Two of these sub-channels are the Commercial OEM
17 channel and the Direct OEM channel.

18 26. Through the Commercial OEM (“COEM”) channel, Microsoft authorized
19 distributors supply what is called “system builder” software to small and medium-sized OEMs
20 for pre-installation on devices.

21 27. Through the Direct OEM (“DOEM”) channel, Microsoft directly provides
22 software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on
23 devices. The DOEMs acquire some components associated with the Microsoft software from
24 Microsoft Authorized Replicators (“ARs”).

25 28. In addition to the OEM channel, Microsoft offers a number of subscription
26 programs through which it provides software to qualified subscribers. One example of a
27 subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals

1 and entities that develop third-party software compatible with Microsoft software. MSDN
2 subscribers are able to download certain Microsoft software directly from Microsoft.

3 29. Microsoft also offers Volume Licensing (“VL”) programs for its business
4 customers. Through the VL program, customers purchase licenses for their software and can
5 add, remove, and upgrade their software as their business needs evolve.

6 **D. Product Activation**

7 30. Like many other software developers, Microsoft has implemented a wide-range
8 of initiatives to protect its customers and combat theft and infringement of its intellectual
9 property. One important tool in Microsoft’s anti-piracy protection arsenal is its product
10 activation system, which involves the activation of software through product keys.

11 31. A Microsoft product key is a 25-character alphanumeric string generated by
12 Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install
13 Microsoft software on a device, they must enter a product key. Then, as part of the activation
14 process, customers and, in some cases, OEMs voluntarily contact Microsoft’s activation servers
15 over the Internet and transmit their product keys and other technical information about their
16 device to the activation servers. The majority of the activations involved in this matter
17 contacted servers that are physically located in Washington.

18 32. The activation process is analogous to the activation of credit cards or mobile
19 phones with a code provided by the financial institution or the mobile carrier. Because
20 Microsoft’s copyrighted software is capable of being installed on an unlimited number of
21 computers, Microsoft relies on the product activation process to detect piracy and protect
22 consumers from the risks of non-genuine software.

23 33. In the OEM channel, each copy of genuine Microsoft Windows 10, Windows 8.1,
24 Windows 8, Windows Vista, Windows 7, Office 365, Office 2013, Office 2010, Windows
25 Server 2012, and Project Standard 2010 software is distributed with a product key unique to that
26 copy of the software—thus, for example, if a customer purchases ten copies of Windows 7, the
27 customer is supplied with ten unique product keys. For Microsoft’s subscription and VL

1 programs, customers are normally supplied a single product key for each version of Microsoft
2 software they license. For example, subscription and volume licensing customers receive one
3 reusable product key for all Office 2010 Professional licenses authorized under their agreements
4 to install and activate all copies.

5 34. Product activation works differently in the COEM and DOEM channels. COEMs
6 use individual product keys to install and, in some cases, activate the software on the devices.
7 DOEMs, on the other hand, either use a master key or a separate file generated from Microsoft
8 to install Windows software on each device.

9 **E. Microsoft's Use of Cyberforensics to Combat Piracy**

10 35. In order to combat the global threat of software piracy of its software, Microsoft
11 relies on investigative methods that leverage state-of-the-art technology to detect software
12 piracy. Microsoft refers to these methods as "cyberforensics."

13 36. As part of its cyberforensic methods, Microsoft analyzes activation data
14 voluntarily provided by users when they activate Microsoft software, including the IP address
15 from which a given product is activated. An IP address is a numerical identifier used to
16 uniquely identify an internet-capable device when the device is connected to the Internet. An IP
17 address is ordinarily assigned to an internet user (whether an individual or an entity) by the
18 user's Internet Service Provider ("ISP").

19 37. Entities charged with managing and administering internet numbering resources,
20 including IP addresses, publish information about IP address assignment and registration in
21 publicly-searchable databases. Akin to an IP address "phone book," these databases can be used
22 to associate each IP address with the individual or entity assigned to use that address. In some
23 cases, the listed individual or entity is actually using the IP address; in other cases, the listed
24 individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in
25 some instances, the identity of the individual or entity associated with a particular IP address is
26 publicly available; in other instances, the identity of the individual or entity can only be obtained
27 from the ISP assigned to that IP address.

1 38. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft
2 software and identify activation patterns and characteristics that make it more likely than not
3 that the IP address associated with the activations is an address through which pirated software
4 is being activated.

5 **F. Defendants' Infringing Conduct**

6 39. Microsoft's cyberforensics have identified over eight thousand activations of
7 Microsoft software originating from IP address 173.10.29.66 ("the IP Address"), which is
8 presently assigned to Comcast Business Communications, LLC, and which, on information and
9 belief, is being used by the Defendants in furtherance of the unlawful conduct alleged herein. A
10 meaningful volume of these activations have characteristics that, on information and belief,
11 demonstrate that Defendants are using the IP Address to activate pirated software.

12 40. On information and belief, Defendants have activated and attempted to activate
13 copies of Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7,
14 Office 365, Office 2013, Office 2010, Windows Server 2012, and Project Standard 2010 with
15 product keys that have the following characteristics:

- 16 a. Product keys known to have been stolen from Microsoft's supply chain;
17 b. Product keys used more times than is authorized by the applicable software
18 license;
19 c. Subscription program keys used in a manner that is not authorized by the
20 applicable license (such as product keys intended for educational institutions
21 used by commercial entities); or
22 d. Product keys used to activate software outside of the region for which it was
23 intended.

24 41. On information and belief, each of these activations and attempted activations
25 constitutes the unauthorized copying of Microsoft software, in violation of Microsoft's software
26 licenses and its intellectual property rights.

1 42. On information and belief, Defendants have been and continue to be involved in
2 installing counterfeit and infringing copies of Microsoft’s software and/or related components.

3 43. On information and belief, Defendants have committed and continue to commit
4 acts of copyright and trademark infringement against Microsoft. On information and belief, at a
5 minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft’s
6 registered copyrights, trademarks, and service mark.

7 **V. CAUSES OF ACTION**

8 **First Claim**

9 **Copyright Infringement - 17 U.S.C. § 501 et seq.**

10 Microsoft is the sole owner of Microsoft Windows 10, Windows 8.1, Windows 8,
11 Windows Vista, Windows 7, Office 365, Office 2013, Office 2010, Windows Server 2012, and
12 Project Standard 2010, and of the corresponding copyrights and Certificates of Registration with
13 the registration numbers listed above.

14 44. Defendants have infringed Microsoft’s copyrights by reproducing Microsoft
15 software in the United States of America without approval or authorization from Microsoft.

16 45. At a minimum, Defendants acted with willful blindness to, or in reckless
17 disregard of, Microsoft’s registered copyrights.

18 46. As a result of Defendants’ wrongful conduct, Microsoft is entitled to recover its
19 actual damages and Defendants’ profits attributable to the infringement. Alternatively,
20 Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

21 47. The award of statutory damages should be enhanced in accordance with 17
22 U.S.C. § 504(c)(2).

23 48. Microsoft is further entitled to injunctive relief and an order impounding all
24 infringing materials. Microsoft has no adequate remedy at law for Defendants’ wrongful
25 conduct because, among other things: (a) Microsoft’s copyrights are unique and valuable
26 property which have no readily determinable market value; (b) Defendants’ infringement harms
27

1 Microsoft such that Microsoft could not be made whole by any monetary award; and (c)
2 Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

3 **Second Claim**
4 **Trademark Infringement – 15 U.S.C. § 1114**

5 49. Defendants' activities constitute infringement of Microsoft's federally registered
6 trademarks and service mark with the registration numbers listed above.

7 50. Microsoft advertises, markets, distributes, and licenses its software and related
8 components under the trademarks and service mark described above and uses these trademarks
9 and service mark to distinguish Microsoft's products from the software and related items of
10 others in the same or related fields.

11 51. Because of Microsoft's long, continuous, and exclusive use of these trademarks
12 and service mark, they have come to mean, and are understood by customers, end users, and the
13 public to signify, software programs and related components or services of Microsoft.

14 52. The infringing materials that Defendants have and are continuing to install are
15 likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

16 53. Further, Defendants' activities are likely to lead the public to conclude,
17 incorrectly, that the infringing materials that Defendants are installing originate with or are
18 authorized by Microsoft, thereby harming Microsoft, its licensees, and the public.

19 54. At a minimum, Defendants acted with willful blindness to, or in reckless
20 disregard of, Microsoft's registered marks.

21 55. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its
22 actual damages, Defendants' profits attributable to the infringement, and treble damages and
23 attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to
24 statutory damages under 15 U.S.C. § 1117(c).

25 56. Microsoft is further entitled to injunctive relief and an order compelling the
26 impounding of all infringing materials. Microsoft has no adequate remedy at law for
27 Defendants' wrongful conduct because, among other things: (a) Microsoft's trademarks and

1 service mark are unique and valuable property that have no readily determinable market value;
2 (b) Defendants' infringement constitutes harm to Microsoft's reputation and goodwill such that
3 Microsoft could not be made whole by any monetary award; (c) if Defendants' wrongful
4 conduct is allowed to continue, the public is likely to become further confused, mistaken, or
5 deceived as to the source, origin or authenticity of the infringing materials; and (d) Defendants'
6 wrongful conduct, and the resulting harm to Microsoft, is continuing.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, Microsoft respectfully prays for the following relief:

9 A. That the Court enter judgment in Microsoft's favor on all claims;

10 B. That the Court restrain and enjoin Defendants, their directors, principals, officers,
11 agents, representatives, employees, attorneys, successors and assigns, and all others in active
12 concert or participation with it, from:

13 (i) copying or making any other infringing use or infringing distribution of
14 Microsoft's software and other intellectual property including but not limited to the software
15 identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;

16 (ii) manufacturing, assembling, producing, distributing, offering for
17 distribution, circulating, selling, offering for sale, advertising, importing, promoting, or
18 displaying any Microsoft software or other intellectual property bearing any simulation,
19 reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered
20 trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service
21 Mark, and Copyright Registration Numbers listed above;

22 (iii) using any simulation, reproduction, counterfeit, copy, or colorable
23 imitation of Microsoft's registered trademarks, service mark, or copyright including, but not
24 limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in
25 connection with the manufacture, assembly, production, distribution, offering for distribution,
26 circulation, sale, offering for sale, import, advertisement, promotion, or display of any software,
27 component, and/or other item not authorized or licensed by Microsoft;

1 (iv) engaging in any other activity constituting an infringement of any of
2 Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to
3 use or to exploit, these trademarks, service mark, and/or copyrights; and

4 (v) assisting, aiding, or abetting any other person or business entity in
5 engaging in or performing any of the activities listed above;

6 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503
7 impounding all counterfeit and infringing copies of purported Microsoft software and/or
8 materials bearing any of Microsoft's trademarks or service mark, and any related item, including
9 business records, that are in Defendants' possession or under their control;

10 D. That the Court enter an order declaring that Defendants hold in trust, as
11 constructive trustees for the benefit of Microsoft, the illegal profits obtained from their
12 distribution of counterfeit and infringing copies of Microsoft's software, and requiring
13 Defendants to provide Microsoft a full and complete accounting of all amounts due and owing
14 to Microsoft as a result of Defendants' unlawful activities;

15 E. That Defendants be required to pay all general, special, actual, and statutory
16 damages which Microsoft has sustained, or will sustain, as a consequence of Defendants'
17 unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17
18 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

19 F. That Defendants be required to pay to Microsoft both the costs of this action and
20 the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for
21 by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

22 G. That the Court grant Microsoft such other, further, and additional relief as the
23 Court deems just and equitable.

1 DATED this 22nd day of February, 2017.

2 DAVIS WRIGHT TREMAINE LLP
3 *Attorneys for Plaintiff Microsoft Corp.*

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