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8 Attorneys for Plaintiff MiniSoft, Inc.

9 **UNITED STATES DISTRICT COURT**
 0 **DISTRICT OF ARIZONA**

1
2 MINISOFT, INC.,

3 Plaintiff,

4 vs.

5 ELITE INFORMATION SYSTEMS, INC.,
 6 THOMSON ELITE, a business of THOMSON
 CORP., THOMSON LEGAL &
 7 REGULATORY APPLICATIONS, INC., and
 THOMSON LEGAL & REGULATORY
 8 GROUP,

19 Defendants.

Case No.

COMPLAINT

(Demand for Jury Trial)

21 Plaintiff Minisoft, Inc. hereby alleges the following claims for (1) breach of contract,
 22 (2) unjust enrichment, (3) declaratory judgment pursuant to Federal Rule of Civil Procedure
 23 57, and (4) injunctive relief against Defendants Elite Information Systems, Inc., Thomson
 24 Elite, Thomson Corp., Thomson Legal & Regulatory Applications, Inc., and Thomson
 25 Legal & Regulatory Group (“Defendants”):
 26
 27
 28

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THE PARTIES

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2 1. Plaintiff Minisoft, Inc. (“MiniSoft”) is a corporation organized and existing
3 under the laws of the State of Arizona with its principal place of business at 10030 North
4 25th Avenue, Phoenix, Arizona 85021.

5 2. Defendant Elite Information Systems, Inc. (“Elite”) has its principal place of
6 business at 5100 West Goldleaf Circle, Suite 100, Los Angeles, California 90056.

7 3. Defendant Thomson Elite is the wholly owned subsidiary of Thomson Corp.,
8 with its principal place of business at 610 Opperman Drive, Eagan, Minnesota 55123.

9 4. Defendant Thomson Corp. is a corporation organized and existing under the
0 laws of Ontario, Canada, with its principal place of business at Suite 2706, Toronto-
1 Dominion Centre, Toronto, Ontario M5K 1A1.

2 5. Defendant Thomson Legal & Regulatory Applications, Inc. is a corporation
3 organized and existing under the laws of the State of Delaware with its principal place of
4 business at 610 Opperman Drive, Eagan, Minnesota 55123.

5 6. Thomson Legal & Regulatory Group is a corporation organized and existing
6 under the laws of the State of Delaware with its principal place of business at 610
7 Opperman Drive, Eagan, Minnesota 55123.

8 7. Plaintiff MiniSoft has a contractual relationship with Defendant Elite
19 Information Systems, Inc.

20 8. Defendants Thomson Corp., Thomson Elite, Thomson Legal & Regulatory
21 Applications, Inc., and Thomson Legal & Regulatory Group (“Thomson”) are successors in
22 interest to Elite Information Systems, Inc. and now own and operate the business of Elite
23 Information Systems, Inc.

JURISDICTION AND VENUE

24
25 9. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
26 § 1332, because the amount in controversy exceeds the value of \$75,000.00, exclusive of
27 interest and cost, and is between citizens of different States.
28

1 19. In 2003, Defendant Thomson acquired Elite and assumed all of its rights and
2 responsibilities under the EARC Agreement.

3 20. Under the EARC Agreement, Defendants unilaterally determine amounts
4 owing to MiniSoft on a monthly basis, without receiving invoices from MiniSoft.

5 21. Elite's and Thomson's course of dealing showed the parties' intention that
6 MiniSoft receive 85% of Support fees and 50% of license fees, as Defendants paid
7 MiniSoft 85% of Support fees and 50% of license fees from September 30, 2001 to
8 November 2006.

9 22. Although the parties regularly discussed proper amounts owing from various
0 accounts under the EARC Agreement, Defendants never questioned the EARC
1 Agreement's meaning regarding MiniSoft's 85% share of Support fees and 50% of license
2 fees. Rather, between September 30, 2001 and November 2006, Defendants made a
3 monthly determination that MiniSoft was owed these amounts under the EARC Agreement.

4 23. On September 30, 2003, Defendants entered into an Omnibus Agreement
5 with MiniSoft, extending the EARC Agreement to September 15, 2008, and providing that
6 "[a]ll other terms of the EARC[] Agreement shall remain unchanged, unaltered and/or
7 unmodified by this [Omnibus] Agreement." [Omnibus Agreement, Exh. 2 at 2, par. 5] A
8 true and correct copy of the Omnibus Agreement is attached as Exhibit "2."

19 24. Defendants were consistently paying MiniSoft 85% of Support fees and 50%
20 of license fees under the EARC Agreement at the time of entering into the Omnibus
21 Agreement.

22 25. As Defendants are aware, MiniSoft would operate at a loss if it only received
23 50% of Support fees, rather than the 85% provided by the EARC Agreement.

24 26. Following its acquisition of Elite and a review of Elite's agreements,
25 Defendant Thomson disingenuously took the position in November 2006 that both
26 MiniSoft and Elite had been mistaken over the previous five years as to the EARC
27 Agreement's true meaning, claimed that MiniSoft was actually entitled to only 50%, rather
28

1 than 85%, of Support fees, and stopped making payments to MiniSoft under the EARC
2 Agreement.

3 27. In November 2006, Defendants altogether ceased paying MiniSoft any
4 Support fees or license fees, unilaterally claiming a “set-off” for past Support fees allegedly
5 overpaid as a result of Defendant Thomson’s new and disingenuous interpretation of the
6 EARC Agreement. As Defendants are MiniSoft’s primary source of revenue, the cessation
7 of the payments has caused, and is causing, grave harm to MiniSoft.

8 28. On September 30, 2001 Defendant Elite and MiniSoft also entered into the
9 EPRS Software Distribution Agreement (“EPRS Agreement”), regarding professional
0 reporting software. A true and correct copy of the EPRS Agreement is attached as Exhibit
1 “3.”

2 29. Under the EPRS Agreement, Defendants are required to pay MiniSoft 85% of
3 maintenance fees for MiniSoft’s Support of products under the EPRS Agreement. [EPRS
4 Agreement, Exh. 3 at 10 (under “Support Fees”).

5 30. Defendants have refused to pay fees owing to MiniSoft under the EPRS
6 Agreement, unilaterally claiming a “set-off” for past Support fees allegedly overpaid under
7 the EARC Agreement.

8 31. MiniSoft has continued to provide licenses and Support for the product, even
19 though Defendants have ceased paying MiniSoft for those licenses and Support.

20 32. The EARC Agreement only requires MiniSoft to continue its Support
21 services “[s]o long as Elite has paid the appropriate Support Fees” [EARC
22 Agreement, Exh. 1 at 3, par. 6]

23 33. On March 19, 2007 MiniSoft notified Defendants that their refusal to pay any
24 license and Support fees, let alone the full 85% of Support fees required under the EARC
25 Agreement, constitutes a material breach of the EARC Agreement. A true and correct copy
26 of that March 19, 2007 letter (“Letter”) is attached as Exhibit “4.”
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1 34. The EARC Agreement provides that “[e]ither party may terminate this
2 Agreement upon the occurrence of a material breach hereof by the other party, which
3 material breach has not been cured within ninety (90) days after receipt of written notice by
4 the breaching party from the other party.” [EARC Agreement, Exh. 1 at 6, par. 14.2]

5 35. The ninety (90) day cure period has now passed, and Defendants have
6 nevertheless continued to refuse to pay MiniSoft any license or Support fees under the
7 EARC Agreement, and MiniSoft has not received any license or Support fees from Elite
8 since November 2006.

9 **COUNT I**
10 **(Breach of Contract)**

1 36. Plaintiff incorporates by reference each and every allegation contained in
2 paragraphs 1 through 35 of this Complaint.

3 37. The EARC Agreement entered into by MiniSoft and Elite on September 30,
4 2001 is a valid contract.

5 38. The EPRS Agreement, also entered into by MiniSoft and Elite on September
6 30, 2001 is a valid contract.

7 39. The EARC Agreement, by its terms, was to remain in effect for a period of
8 five years, at which time Elite could terminate the EARC Agreement upon six months’
9 written notice.

10 40. On September 30, 2003, MiniSoft and Defendants entered into an Omnibus
11 Agreement, extending the EARC Agreement’s term to September 15, 2008. [Omnibus
12 Agreement, Exh. 2 at 2, par. 5]

13 41. Defendants have breached, are breaching, and threaten to continue to breach
14 their obligations under the EARC Agreement by refusing to pay MiniSoft any license or
15 Support fees.

16 42. Defendants have also breached, are breaching, and threaten to continue to
17 breach their obligations under the EPRS Agreement by refusing to pay MiniSoft
18 maintenance fees owing thereunder.

1 43. MiniSoft has performed all of its obligations under the EARC Agreement and
2 EPRS Agreement, and indeed has continually provided licenses and Support for the product
3 even when Defendants have ceased paying MiniSoft for those licenses and Support.

4 44. The EARC Agreement provides that MiniSoft may “terminate this
5 Agreement upon the occurrence of a material breach hereof by the other party, which
6 material breach has not been cured within ninety (90) days after receipt of written notice by
7 the breaching party from the other party.” [EARC Agreement, Exh. 1 at 6, par. 14.2]

8 45. On March 19, 2007, MiniSoft informed Defendants by Letter that their
9 refusal to pay any license fees or Support fees, let alone the full 85% of Support fees
0 required under the EARC Agreement, constituted a material breach of the EARC
1 Agreement.

2 46. Defendants have nevertheless continued to refuse to pay MiniSoft any license
3 fees or Support fees under the EARC Agreement, as MiniSoft has not received any license
4 or Support fees from Defendants since November 2006.

5 47. The EARC Agreement provides that “Elite shall pay MiniSoft a late payment
6 charge at the rate of one percent (1%) per month or the maximum legal rate, whichever is
7 less, for any outstanding fees or payments of any kind payable by Elite to MiniSoft and not
8 paid as provided herein.” [EARC Agreement, Exh. 1 at 3, par. 3.3]

19 48. The EPRS Agreement also provides for interest on late payments made to
20 MiniSoft.

21 49. Defendants’ breach of contract has caused MiniSoft damages in the form of
22 unpaid license and Support fees from November 2006 to the present, interest on the unpaid
23 amounts, as allowed under the EARC Agreement and otherwise, and other damages to be
24 shown by the evidence.

25 WHEREFORE, with respect to Count I, Plaintiff respectfully requests judgment as
26 follows:
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1 A. An award against Defendants of compensatory damages in the amount
2 established by the evidence, including unpaid license and Support fees, fees under the
3 EPRS Agreement, and other resulting damages;

4 B. An award against Defendants of interest accrued on the unpaid license and
5 Support fees, and fees under the EPRS Agreement, as provided by the EARC Agreement,
6 EPRS Agreement, and otherwise;

7 C. An award against Defendants of reasonable attorneys' fees and costs and
8 disbursements for this action, as provided under the EARC Agreement, EPRS Agreement,
9 common law, A.R.S. § 12-341, A.R.S. § 12-341.01, and other applicable law;

0 D. For any and all pre-judgment and post-judgment interest at the rate applicable
1 under the law; and

2 E. For such other relief as this Court deems just and proper.

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4 **COUNT II**
5 **(Unjust Enrichment)**

6 50. Plaintiff incorporates by reference each and every allegation contained in
7 paragraphs 1 through 49 of this Complaint.

8 51. Defendants have collected license and Support fees from end users for
9 products and Support provided by MiniSoft, unjustly refusing to pay MiniSoft for such
10 products and Support.

11 52. MiniSoft incurs the burden of providing customers with products and
12 Support, with Defendants merely collecting fees based on MiniSoft's efforts.

13 53. Defendants have profited, and will continue to profit, as a result of their
14 failure to pay for MiniSoft's products and Support, to the detriment of MiniSoft.

15 54. There is no justification for Defendants' enrichment in collecting license and
16 Support fees based on MiniSoft's products and Support, to the detriment of MiniSoft.

17 55. Defendants have caused injury to MiniSoft and there is no adequate remedy
18 at law to redress such injury.

1 56. MiniSoft is entitled to receive any and all amounts by which Defendants have
2 been unjustly enriched.

3 WHEREFORE, with respect to Count II Plaintiff respectfully requests judgment as
4 follows:

5 A. An award against Defendants of the amount by which they have been unjustly
6 enriched, including all Support fees, licenses, and other benefits derived from MiniSoft's
7 efforts;

8 B. For any and all pre-judgment and post-judgment interest at the rate applicable
9 under the law; and

0 C. For such other relief as this Court deems just and proper.

1 **COUNT III**
2 **(Declaratory Judgment)**

3 57. Plaintiff incorporates by reference each and every allegation contained in
4 paragraphs 1 through 56 of this Complaint.

5 58. This controversy between MiniSoft and Defendants relates to the EARC
6 Agreement and is present, substantial, and justiciable, and sufficiently invokes this Court's
7 powers pursuant to 28 U.S.C. § 2201 et seq. to declare the Parties' rights and liabilities.

8 59. The actual controversy between the Parties warranting declaratory judgment
19 includes, but is not limited to, a declaration that: (1) the EARC Agreement is terminated,
20 (2) the termination allows MiniSoft to provide Support services to the end users, (3)
21 Defendants have no right to take an automatic set-off on amounts currently owing under the
22 EARC Agreement, and (4) the EARC Agreement's termination requires Defendants "to
23 immediately cease use of [MiniSoft's] Products."

24 60. The EARC Agreement provides that all ownership rights in the product are
25 held exclusively by MiniSoft. [EARC Agreement, Exh. 1 at 6, par. 12]

26 61. The EARC Agreement further states that, "[u]pon termination of this
27 Agreement for any reason, all rights and licenses granted by MiniSoft to Elite hereunder
28 shall immediately cease," and that Elite's right to provide support services to end user

1 customers will continue only “so long as all Support Fees are kept current for all Elite end
2 user accounts.” [Id. at 7, par. 14.5]

3 62. Defendants have failed to keep current the Support fees and license fees
4 owing to MiniSoft as of November 2006, claiming a unilateral right to retain such monies
5 as a set-off for supposed overpayments made by Defendants over a period of five years.

6 63. The EARC Agreement requires Defendants to pay MiniSoft 85% of Support
7 fees and 50% of license fees for licenses and Support provided by MiniSoft.

8 64. Defendants materially breached the EARC Agreement by failing to pay
9 MiniSoft any license fees or Support fees as of November 2006.

0 65. The EARC Agreement further provides that “[u]pon termination of this
1 EARC Agreement for any reason by either party, Elite shall immediately cease use of the
2 Products” [Id. at 7, par. 14.6]

3 66. Plaintiff seeks, pursuant to 28 U.S.C. § 2201 et seq. and A.R.S. §§ 12-1831 et
4 seq., a judicial declaration by this Court that the EARC Agreement is terminated, that the
5 termination allows MiniSoft to provide Support services to the end users, that Defendants
6 have no right to take an automatic set-off on amounts currently owing under the EARC
7 Agreement, and that the EARC Agreement’s termination requires Defendants “to
8 immediately cease use of [MiniSoft’s] Products.”

19 67. Such a judicial declaration is necessary and appropriate at this time under the
20 circumstances alleged.

21 WHEREFORE, with respect to Count III, Plaintiff respectfully requests judgment as
22 follows:

23 A. A judicial declaration that (1) the EARC Agreement is terminated because
24 Defendants failed to cure a material breach within 90 days, (2) the termination allows
25 MiniSoft to provide Support services to the end users, (3) Defendants have no right to take
26 an automatic set-off on amounts currently owing under the EARC Agreement, and (4) the
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1 EARC Agreement’s termination requires Defendants “to immediately cease use of
2 [MiniSoft’s] Products;”

3 B. An award against Defendant of reasonable attorneys’ fees and costs and
4 disbursements for this action, as provided under the EARC Agreement, the common law,
5 and other applicable law;

6 C. For such orders, including injunctive relief, as are necessary to preserve this
7 Court’s jurisdiction over the parties and issues herein; and

8 D. For such other and further relief as this Court deems just and proper.

9 **COUNT IV**
0 **(Injunctive Relief)**

1 68. Plaintiff incorporates by reference each and every allegation contained in
2 paragraphs 1 through 67 of this Complaint.

3 69. Defendants’ failure to cure their non-payment of license and Support fees
4 within 90 days of MiniSoft’s Letter informing Defendant of such breach has terminated the
5 EARC Agreement according to its terms.

6 70. The EARC Agreement provides that “[u]pon termination of this EARC
7 Agreement for any reason by either party, Elite shall immediately cease use of the Products
8” [EARC Agreement, Exh. 1 at 7, par. 14.6]

19 71. Defendants continue to use MiniSoft’s products after the EARC Agreement
20 has been terminated, although not authorized to do so.

21 72. The EARC Agreement further provides that “Elite shall not directly or
22 indirectly, copy, reproduce, distribute, transfer, reverse-engineer, de-compile or
23 disassemble the Products or any portion thereof other than as permitted herein.” [EARC
24 Agreement, Exh. 1 at 6, par. 13]

25 73. Defendants have created collections software built for 3E architecture, which
26 was based on the knowledge derived from MiniSoft products.

