

ORIGINAL

1 LYNNE C. HERMLE (STATE BAR NO. 99779)  
 lchermle@orrick.com  
 2 JESSICA R. PERRY (STATE BAR NO. 209321)  
 jperry@orrick.com  
 3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 1000 Marsh Road  
 4 Menlo Park, California 94025  
 Telephone: 650-614-7400  
 5 Facsimile: 650-614-7401

6 Attorneys for Defendant  
 MICROSOFT CORPORATION

E-filing

FILED  
 7/23/24 P 3:18  
 RICHARD W. HERRINGTON  
 CLERK OF COURT  
 SAN FRANCISCO, CALIFORNIA  
 (5) NRP

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

NC

CV 12 0942

12 S. ZODY,

Case No.

13 Plaintiff,

NOTICE OF REMOVAL UNDER 28  
U.S.C. §§ 1332, 1441 AND 1446

14 v.

15 MICROSOFT CORPORATION AND DOES  
 1-25, INCLUSIVE,

16 Defendants.

FAXED

21  
22  
23  
24  
25  
26  
27  
28

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
2 CALIFORNIA AND TO PLAINTIFF S. ZODY AND HER COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Defendant Microsoft Corporation removes the above-  
4 captioned action from the Superior Court of the State of California in and for the County of San  
5 Francisco to this Court pursuant to 28 U.S.C. sections 1332, 1441 and 1446, and states that the  
6 removal is proper for the reasons set forth below.

7 **BACKGROUND**

8 1. On January 13, 2012, Plaintiff S. Zody filed a Complaint against Microsoft in the  
9 Superior Court of the State of California, County of San Francisco, entitled *S. Zody, Plaintiff, v.*  
10 *Microsoft Corporation and Does 1-25, inclusive, Defendants*, Case No. CGC-12-517288 (the  
11 "Complaint"). A true and correct copy of the Complaint, and the other state-court papers served  
12 upon Microsoft, are attached to this notice as **Exhibit A**. The allegations of the Complaint and  
13 First Amended Complaint in the Action are incorporated by reference in this Notice of Removal.

14 2. The Complaint purports to assert seven causes of action stemming from Plaintiff's  
15 employment with Microsoft. Specifically, the Complaint alleges causes of action for: (1)  
16 discrimination based on gender under Cal. Gov't Code sections 12940, *et seq.*; (2) harassment  
17 based on gender under Cal. Gov't Code sections 12940, *et seq.*; (3) retaliation in violation of Cal.  
18 Gov't Code sections 12940, *et seq.*; (4) failure to prevent and/or remedy discrimination and  
19 harassment in violation of Gov't Code sections 12940, *et seq.*; (5) breach of contract; (6) breach  
20 of the implied covenant of good faith and fair dealing; and (7) injunctive relief.

21 3. On February 8, 2012, Plaintiff filed a First Amended Complaint, keeping the seven  
22 claims discussed above and adding a claim for constructive discharge in violation of public  
23 policy. A true and correct copy of the First Amended Complaint is attached hereto as **Exhibit B**.

24 4. Microsoft is informed and believes and on that basis alleges that there have been  
25 no other named defendants in this case and that no other defendant, whether named or not, has  
26 been served with or otherwise received the Complaint in this case.

27 **TIMELINESS OF REMOVAL**

28 5. Plaintiff served Microsoft with a copy of the Complaint and Summons on

1 January 25, 2012. Therefore, this Notice of Removal is timely as it is filed within 30 days of  
2 service of the summons and complaint upon Microsoft in compliance with 28 U.S.C. section  
3 1446(b). Upon information and belief, the only other pleading served is a First Amended  
4 Complaint filed on February 8, 2012, no other pleadings have been served and no orders have  
5 been entered. A true and correct copy of the docket sheet from the San Francisco Superior Court  
6 for this case is attached hereto as **Exhibit C**.

#### 7 JURISDICTION AND GROUNDS FOR REMOVAL

8 6. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
9 section 1332(a). Plaintiff is a resident of the state of California (Exhibit B, First Amended  
10 Complaint, ¶ 1). For diversity purposes, a corporation “shall be deemed a citizen of any State by  
11 which it has been incorporated and of the State where it has its principal place of business”. 28  
12 U.S.C. § 1332(c)(1). Microsoft is a corporation organized under the laws of Washington, with its  
13 principal place of business in the state of Washington. (Declaration of Benjamin O. Orndorff, ¶  
14 3). The citizenship of the unnamed (“Doe”) defendants is disregarded for diversity jurisdiction  
15 purposes. *See* 28 U.S.C. § 1441(a).

16 7. Where it is unclear from the complaint whether the plaintiff is seeking more than  
17 \$75,000, “the defendant bears the burden of actually proving the facts to support jurisdiction,  
18 including the jurisdictional amount.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403  
19 (9th Cir. 1996) (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992). Defendant must  
20 meet its burden by the preponderance of the evidence. 28 U.S.C. § 1446(c)(2)(B). Microsoft  
21 easily meets the preponderance of the evidence standard here.

22 8. The amount in controversy exceeds \$75,000 because Plaintiff alleges that she has  
23 suffered general and special damages, including lost salary, benefits, bonuses, other employee  
24 benefits, lost career opportunities and loss of reputation. She alleges that she was the victim of  
25 discrimination and harassment following her assignment in 2010 to the position of West Region  
26 Business Manager reporting to the Regional Vice President. *See* Exhibit B, First Amended  
27 Complaint, ¶¶ 10-12. Specifically, Plaintiff alleges that her performance ratings were lower than  
28 she deserved. *Id.*, ¶¶ 16-23. She alleges that as the result of these undeservedly low performance

1 ratings she has been denied “increases in her base salary and bonus amounts” and that her ability  
2 to advance in her career at Microsoft has been severely restricted. *Id.*, ¶ 23.

3 9. Plaintiff’s First Amended Complaint alleges that her position with Microsoft was  
4 constructively terminated on February 7, 2012. Exhibit B, First Amended Complaint, ¶ 32.  
5 Plaintiff was paid an annual salary of \$176,031 at the time her employment ended. (Declaration  
6 of Jonathan Hart, ¶ 5). Her bonus in 2011 was \$30,054 and she was given a stock award valued  
7 at \$75,000. *Id.* Thus, assuming a trial date of only one year from removal, Plaintiff’s alleged  
8 wage, bonus and stock award loss through the time of trial would alone be approximately  
9 \$280,000. Additionally, Plaintiff contends that she suffered damages in lost salary and bonuses  
10 from her lower than deserved performance rating in 2011. Exhibit B, First Amended Complaint,  
11 ¶ 23. Had Plaintiff been rated higher in her 2011 performance evaluation, the increase in her  
12 salary, bonus and stock award would have been between \$33,735 and \$135,755. (Declaration of  
13 Jonathan Hart, ¶ 5). Thus, Plaintiff’s alleged back pay damages (not including her requests for  
14 alleged additional lost benefits, career opportunities, loss of reputation, “extreme anguish,  
15 humiliation, emotional distress, physical distress,” punitive and exemplary damages, and  
16 attorneys’ fees) far exceed the \$75,000 threshold.

17 10. Plaintiff also alleges that she has suffered and continues to suffer extreme anguish,  
18 humiliation, and emotional distress. *See* Exhibit B, First Amended Complaint, ¶¶ 44, 52, 62, 71,  
19 88, 109. Assuming Plaintiff sought \$25,000 for emotional distress, a conservative estimate given  
20 that Plaintiff brings four claims for emotional distress damages and describes her anguish to be  
21 “extreme”, this case clearly presents an amount in controversy far in excess of \$75,000.

22 11. Plaintiff also seeks punitive and exemplary damages due to Microsoft’s alleged  
23 conduct, which Plaintiff alleges was oppressive, fraudulent and malicious. *See* Exhibit B, First  
24 Amended Complaint, ¶¶ 53, 63, 72, 89, 110. The amount in controversy may include punitive  
25 damages where they are recoverable as a matter of law. *See Richmond v. Allstate Ins. Co.*, 897 F.  
26 Supp. 447, 450 (S.D. Cal. 1995). Punitive damages are recoverable under the FEHA. *See*  
27 *Vasquez v. Arvato Digital Servs.*, No. CV 11-02836, 2011 WL 2560261 at \*4 (C.D. Cal. June 27,  
28 2011) (“Punitive damages are available under FEHA...and therefore the Court may consider

1 punitive damages when determining the amount in controversy”). Plaintiff seeks punitive  
2 damages for four of her claims—further illustrating that the amount in controversy here far  
3 exceeds \$75,000.

4 12. Additionally, requests for attorney’s fees must be taken into account in  
5 ascertaining the amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156  
6 (9th Cir. 1998) (claims for statutory attorney’s fees to be included in amount in controversy,  
7 regardless of whether award is discretionary or mandatory). The measure of attorneys’ fees  
8 “should be the amount that can reasonably be anticipated at the time of removal, not merely those  
9 already incurred.” *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002).  
10 Often, “attorneys’ fees in individual discrimination cases exceed the damages.” *Id.* Attorney’s  
11 fees are recoverable under the FEHA. *See* Cal. Gov. Code § 12965(b). By the date of trial,  
12 Plaintiff’s claimed attorney’s fees are likely in and of themselves to exceed \$75,000.  
13 Accordingly, Plaintiff’s claimed attorney’s fees further raise the amount in controversy over the  
14 \$75,000 jurisdictional threshold.

15 13. Considering all of the types of relief Plaintiff seeks, the amount in controversy in  
16 this matter clearly exceeds the \$75,000 jurisdictional threshold. Therefore, Microsoft has met by  
17 a preponderance of the evidence its burden of establishing a sufficient amount in controversy for  
18 diversity jurisdiction. *See White v. FCI USA Inc.*, 319 F.3d 672, 675 (5th Cir. 2003) (it was  
19 facially apparent that plaintiff’s wrongful termination claim exceeded \$75,000 based on her  
20 “lengthy list of compensatory and punitive damages,” including lost pay and benefits, impaired  
21 earning capacity, and emotional distress, as well as her claim for attorney’s fees).

22 14. Microsoft reserves the right to amend or supplement this Notice of Removal or to  
23 present additional arguments in support of its entitlement to removal.

#### 24 VENUE

25 15. This action originally was brought in the Superior Court of the State of California,  
26 County of San Francisco, and venue thus lies in the Northern District of this Court, San Francisco  
27 Division, pursuant to 28 U.S.C. sections 1441, 1446(a), and 84(a) and Northern District Local  
28

1 Rule 3-2(c), (d).

2 **NOTICE OF REMOVAL**

3  
4 16. Microsoft will give written notice of the filing of this Notice of Removal to all  
5 adverse parties and will file a copy of the Notice of Removal with the Clerk of the Superior Court  
6 of the State of California in and for the County of San Francisco, pursuant to 28 U.S.C. section  
7 1446(d).

8 17. In compliance with 28 U.S.C. section 1446(a), attached to this notice as **Exhibit A**  
9 are true and correct copies of the state-court papers served upon Microsoft, including the  
10 Summons, Complaint, First Amended Complaint and other papers issued with the Complaint.

11 18. WHEREFORE, Microsoft prays that this civil action be removed from the  
12 Superior Court of the State of California, County of San Francisco, to the United States District  
13 Court of the Northern District of California, San Francisco Division.

14  
15 Dated: February 24, 2012

LYNNE C. HERMLE  
JESSICA R. PERRY  
Orrick, Herrington & Sutcliffe LLP

16  
17  
18 By: 

JESSICA R. PERRY  
Attorneys for Defendant  
MICROSOFT CORPORATION

# EXHIBIT A

CASE NUMBER: CGC-12-517288 S ZODY VS. MICROSOFT CORPORATION et al

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: JUN-15-2012**  
**TIME: 2:00PM**  
**PLACE: Department 610**  
**400 McAllister Street**  
**San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges



**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**MICROSOFT CORPORATION AND DOES 1-25, INCLUSIVE**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**S. ZODY**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

The Superior Court of California, County of San Francisco  
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER:  
(Número del caso)

**CC-12-517288**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Kathleen M. Lucas, Esq., 180 Montgomery St., 20th Fl., San Francisco, CA 94104, (415) 402-0200

DATE:  
(Fecha)

**JAN 13 2012**

CLERK OF THE COURT

Clerk, by  
(Secretario)

*M.A. Moran*

Deputy  
(Adjunto)

**M.A. MORAN**

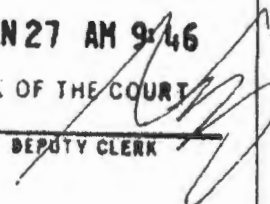
(For proof of service of this summons use Proof of Service of Summons (form POS-010) )  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

FILED POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kathleen M. Lucas, 80339 <b>THE LUCAS LAW FIRM</b> 180 Montgomery Street Suite 2000 San Francisco, CA 94104 TELEPHONE NO.: (415) 402-0200 ATTORNEY FOR (Name): Plaintiff	<b>SUPERIOR COURT</b> COUNTY OF SAN FRANCISCO 2012 JAN 27 AM 9:46 CLERK OF THE COURT BY:  DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000	CASE NUMBER: CGC- 12- 517288
PLAINTIFF/PETITIONER: S. Zody DEFENDANT/RESPONDENT: Microsoft Corporation	Ref. No. or File No.: Zody
<b>PROOF OF SERVICE OF SUMMONS</b>	

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Complaint, Civil Case Cover Sheet, Notice to Plaintiff, Notice Of Related Case, Mediation Services, ADR Information Package

3. a. Party served: Microsoft Corporation

b. Person Served: CSC - Becky DeGeorge - Person authorized to accept service of process

4. Address where the party was served: 2730 Gateway Oaks Dr 100  
Sacramento, CA 95833

5. I served the party

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 1/25/2012 (2) at (time): 2:02 PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of:

Microsoft Corporation

under: CCP 416.10 (corporation)

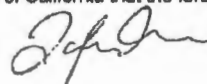
7. Person who served papers

- a. Name: Tyler Dimaria
- b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606
- c. Telephone number: 415-491-0606
- d. The fee for service was: \$ 30.00
- e. I am:
  - (3) registered California process server.
    - (i) Employee or independent contractor.
    - (ii) Registration No.: 2006-06
    - (iii) County SACRAMENTO

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
Date: 1/25/2012

Tyler Dimaria

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

**BY FAX**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address)
Kathleen M. Lucas (SBN 80339) Shawna B. Casebier (SBN 267782)
The Lucas Law Firm
180 Montgomery Street, 20th Floor
San Francisco, CA 94104
TELEPHONE NO (415) 402-0200 FAX NO (415) 402-0400
ATTORNEY FOR (Name) S. Zody

FOR COURT USE ONLY
SUMMONS ISSUED
FILED
San Francisco County Superior Court
JAN 13 2012
CLERK OF THE COURT
BY: [Signature]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME Civic Center Courthouse

CASE NAME
ZODY V. MICROSOFT CORPORATION, ET AL.

CIVIL CASE COVER SHEET
[Checked] Unlimited (Amount demanded exceeds \$25,000)
[ ] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal Rules of Court, rule 3.402)

CASE NUMBER
CGC-12-517288
JUDGE
DEPT

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
Auto Tort: [ ] Auto (22), [ ] Uninsured motorist (46)
Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: [ ] Asbestos (04), [ ] Product liability (24), [ ] Medical malpractice (45), [ ] Other PII/PD/WD (23)
Non-PII/PD/WD (Other) Tort: [ ] Business tort/unfair business practice (07), [ ] Civil rights (08), [ ] Defamation (13), [ ] Fraud (16), [ ] Intellectual property (19), [ ] Professional negligence (25), [ ] Other non-PII/PD/WD tort (35)
Employment: [ ] Wrongful termination (36), [Checked] Other employment (15)
Contract: [ ] Breach of contract/warranty (06), [ ] Rule 3.740 collections (09), [ ] Other collections (09), [ ] Insurance coverage (18), [ ] Other contract (37)
Real Property: [ ] Eminent domain/inverse condemnation (14), [ ] Wrongful eviction (33), [ ] Other real property (26)
Unlawful Detainer: [ ] Commercial (31), [ ] Residential (32), [ ] Drugs (38)
Judicial Review: [ ] Asset forfeiture (05), [ ] Petition re: arbitration award (11), [ ] Writ of mandate (02), [ ] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [ ] Antitrust/Trade regulation (03), [ ] Construction defect (10), [ ] Mass tort (40), [ ] Securities litigation (28), [ ] Environmental/Toxic tort (30), [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: [ ] Enforcement of judgment (20)
Miscellaneous Civil Complaint: [ ] RICO (27), [ ] Other complaint (not specified above) (42)
Miscellaneous Civil Petition: [ ] Partnership and corporate governance (21), [ ] Other petition (not specified above) (43)

- 2. This case [ ] is [Checked] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [ ] Large number of separately represented parties
b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [ ] Substantial amount of documentary evidence
d. [ ] Large number of witnesses
e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [Checked] monetary b. [Checked] nonmonetary: declaratory or injunctive relief c. [Checked] punitive
4. Number of causes of action (specify):
5. This case [ ] is [Checked] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: January 12, 2012
Kathleen M. Lucas

[Signature]
SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):                  Kathleen M. Lucas (SBN 80339) Shawna B. Casebier (SBN 267782)                  The Lucas Law Firm                  180 Montgomery St., 20th Fl.                  San Francisco, CA 94104                  TELEPHONE NO.: (415) 402-0200 FAX NO. (Optional): (415) 402-0400                  E-MAIL ADDRESS (Optional):                  ATTORNEY FOR (Name): Plaintiff, S. Zody</p>	<p>FOR COURT USE ONLY</p> <p><b>ENDORSED FILED</b></p> <p>Superior Court of California County of San Francisco</p> <p>JAN 13 2012</p> <p>CLERK OF THE COURT BY: <u>WESLEY RAMIREZ</u> Deputy Clerk</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco                  STREET ADDRESS: 400 McAllister Street.                  MAILING ADDRESS:                  CITY AND ZIP CODE: San Francisco, CA 94102                  BRANCH NAME: Civic Center Courthouse</p>	<p>CASE NUMBER: <b>CGC-12-517288</b></p>
<p>PLAINTIFF/PETITIONER: S. Zody                  DEFENDANT/RESPONDENT: Microsoft Corporation, et al.</p>	<p>JUDICIAL OFFICER:</p>
<p><b>NOTICE OF RELATED CASE</b></p>	<p>DEPT.:</p>

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: K. Oliver v. Microsoft Corporation, et al.  
 b. Case number: CGC-12-517202  
 c. Court:  same as above  
 other state or federal court (name and address):  
 d. Department: N/A  
 e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):  
 f. Filing date: January 11, 2012  
 g. Has this case been designated or determined as "complex?"  Yes  No  
 h. Relationship of this case to the case referenced above (check all that apply):  
 involves the same parties and is based on the same or similar claims.  
 arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
 involves claims against, title to, possession of, or damages to the same property.  
 is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
 Additional explanation is attached in attachment 1h  
 i. Status of case:  
 pending  
 dismissed  with  without prejudice  
 disposed of by judgment
2. a. Title:  
 b. Case number:  
 c. Court:  same as above  
 other state or federal court (name and address):  
 d. Department:

PLAINTIFF/PETITIONER: S. Zody	CASE NUMBER
DEFENDANT/RESPONDENT: Microsoft Corporation, et al.	

2. (continued)

- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 2h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment

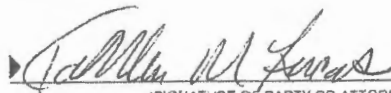
3.

- a. Title:
- b. Case number:
- c. Court:  same as above  
 other state or federal court (name and address):
- d. Department:
- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 3h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment

4.  Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: January 12, 2012

Kathleen M. Lucas  
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

  
(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: S. Zody	CASE NUMBER.
DEFENDANT/RESPONDENT: Microsoft Corporation, et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

*(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)*

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:  
180 Montgomery St., 20th Fl., San Francisco, CA 94104
  
2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one)*:
  - a.  deposited the sealed envelope with the United States Postal Service.
  - b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  
3. The *Notice of Related Case* was mailed:
  - a. on *(date)*: January 13, 2012
  - b. from *(city and state)*: San Francisco, CA
  
4. The envelope was addressed and mailed as follows:
 

<ol style="list-style-type: none"> <li>a. Name of person served: Melissa Lamfalusi, Esq., Microsoft Corp. Street address: 1 Microsoft Way City: Redmond State and zip code: Washington, 98052</li> <li>b. Name of person served:  Street address: City: State and zip code:</li> </ol>	<ol style="list-style-type: none"> <li>c. Name of person served:  Street address: City: State and zip code:</li> <li>d. Name of person served:  Street address: City: State and zip code:</li> </ol>
--	--
  
- Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 13, 2012

Shawna B. Casebier

(TYPE OR PRINT NAME OF DECLARANT)

▶ 

(SIGNATURE OF DECLARANT)

1 KATHLEEN M. LUCAS (Bar No. 80339)  
2 SHAWNA B. CASEBIER (Bar No. 267782)  
3 THE LUCAS LAW FIRM  
4 180 Montgomery Street, Suite 2000  
5 San Francisco, California 94104  
6 Tel: (415) 402-0200  
7 Fax: (415) 402-0400

8 Attorneys for Plaintiff  
9 S. ZODY

SUMMONS ISSUED  
**FILED**  
San Francisco County Superior Court

JAN 13 2012

CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN THE COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

S. ZODY

Plaintiff,

vs.

MICROSOFT CORPORATION AND  
DOES 1-25, INCLUSIVE.

Defendants.

Case No.:

**CGC-12-517288**

**COMPLAINT FOR DAMAGES AND  
REQUEST FOR INJUNCTIVE RELIEF**

- 1) EMPLOYMENT DISCRIMINATION: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 2) HARASSMENT: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 3) RETALIATION IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 4) FAILURE TO PREVENT AND/OR REMEDY DISCRIMINATION AND HARASSMENT IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 5) BREACH OF CONTRACT;
- 6) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND,
- 7) INJUNCTIVE RELIEF.

**DEMAND FOR JURY TRIAL**



1 Plaintiff S. ZODY hereby alleges:

2 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

3 1. S. ZODY (hereinafter, "ZODY" or "Plaintiff"), at all relevant times mentioned herein,  
4 was, and is, a resident of the State of California. ZODY is currently employed as West Region  
5 Business Manager of Defendant MICROSOFT CORPORATION.

6 2. MICROSOFT CORPORATION (hereinafter, "MICROSOFT," "the company,"  
7 "Defendant" or included in "Defendants") is a publicly traded, multinational corporation that  
8 develops, manufactures, licenses, and supports a wide range of products and services  
9 predominantly related to computing. MICROSOFT is registered to do business in the State of  
10 California and does business throughout the State of California. MICROSOFT maintains offices  
11 in the City and County of San Francisco, State of California.

12 3. Defendants DOES 1-25 are sued herein under fictitious names. Their true names and  
13 capacities are unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges that  
14 each of these fictitiously named Defendants is responsible in some way for the occurrences  
15 herein alleged and Plaintiff's damages as herein alleged were caused by Defendants. Plaintiff  
16 will seek leave of court to provide the true identities of DOES 1-25 when they become known.

17 4. Plaintiff is informed and believes, and based on that information and belief alleges, that at  
18 all relevant times herein, each of the Defendants and DOES 1-25 was the agent, alter-ego, joint  
19 employer, ostensible agent for, employee of, and/or joint venturer with, or working in concert  
20 with, his/her co-defendants and was acting within the course and scope of such agency,  
21 employment and/or joint venture or concerted activity. To the extent that said conduct was  
22 perpetrated by certain Defendants, the remaining Defendants and DOES confirmed, adopted,  
23 approved, and/or ratified the same.

24 5. Plaintiff was hired by MICROSOFT in 2000 and has been regularly promoted during her  
25 career at MICROSOFT.

26 6. Plaintiff is a female.

27 7. Over the course of Plaintiff's career at MICROSOFT, she has consistently been ranked a  
28 top performer across all of the divisions she has worked and has been the recipient of multiple



1 "gold star" awards during her tenure, including a two month sabbatical called the Microsoft  
2 Achievement Award. These awards were for exemplary performance.

3 8. Over the course of Plaintiff's career at MICROSOFT, Plaintiff has consistently exceeded  
4 the goals assigned to her and has been rewarded with promotions and increased compensation.

5 9. Over the course of Plaintiff's career at MICROSOFT, Plaintiff has been repeatedly  
6 recruited for promotions within different divisions and has relocated to five different cities  
7 within the United States to further her career trajectory with MICROSOFT.

8 10. In October 2010, Plaintiff was recruited for the job of West Region Business Manger  
9 responsible for California, reporting to the Regional Vice President, a male.

10 11. The Regional Vice President works out of MICROSOFT's offices in the City of  
11 Mountain View, County of Santa Clara.

12 12. Since reporting to the Regional Vice President, Plaintiff has been, and continues to be,  
13 subjected to harassing and discriminatory actions on the basis of her gender, female. These  
14 actions hinder her ability to do her job and affect the terms and conditions of her employment.

15 13. Defendants treat Plaintiff differently than other similarly situated male employees in the  
16 terms and conditions of her employment because she is a female.

17 14. Defendants harass Plaintiff on the basis of her gender, female.

18 15. Despite outperforming similarly situated males, on Plaintiff's last performance review  
19 her manager unfairly ranked her lower than other similarly situated males, and lower than the  
20 results on her performance warranted as compared to others.

21 16. Based on information and belief, MICROSOFT requires its managers to follow a bell  
22 curve distribution model in providing annual performance ratings to its employees. The model  
23 requires that only 20% of employees receive the highest rating of "1," 20% receive a "2," 40%  
24 receive a "3," 13% receive a "4," and 7% receive the lowest rating of "5." Based on information  
25 and belief, the ratings are to reflect the environment in which results were achieved and the  
impact of an individual's performance relative to peers on the team. Based on information and  
belief, managers have unfettered discretion in calibrating the ratings.

1 17. Based on information and belief, the rating an employee receives determines the extent to  
2 which an employee's salary will be increased and bonuses distributed.

3 18. Based on information and belief, a rating of a "1" or "2" is to reflect "greatly surpassing  
4 expectations" and "surpassing expectations," respectively. A rating of a "3" is to reflect  
5 "successfully delivering against expectations."

6 19. For fiscal year 2011, Plaintiff surpassed all of the performance goals assigned to her.

7 20. Despite meeting all of her goals and without providing any rationale, a manager, without  
8 adequate explanation, told Plaintiff that her supervisor intended to rate her as the "token 5"  
9 within her group. In response to receiving this information, Plaintiff initiated several discussions  
10 with her manager about the unfairness of such a rating given Plaintiff's exceptional performance  
11 throughout the year. After these discussions with her supervisor, Plaintiff was given a "3" rating.

12 21. Based on information and belief, Plaintiff's performance, as compared to others, was  
13 deserving of a rating of "2."

14 22. Due to the actions and behavior of the Regional Vice President, including the unfair and  
15 undeserved performance ranking, Plaintiff's ability to advance in her career at MICROSOFT has  
16 been severely restricted by the discrimination and harassment. As a result, she has been denied  
17 additional increases in her base salary and bonus amounts to which she otherwise would have  
18 been entitled.

19 23. On a regular basis, Plaintiff is subjected in private and public to demeaning, abusive,  
20 gender-based criticism by her manager. This has affected Plaintiff's ability to perform her duties  
21 and to obtain a promotion, increased compensation and to move into other positions at  
22 MICROSOFT.

23 24. Routinely, Plaintiff's manager blames her for errors or omissions that are not true and/or  
24 are not her fault. Plaintiff's manager, after these accusations, used the false statements to deny  
25 Plaintiff bonuses, stock and other compensation while awarding them to similarly situated and/or  
less qualified male employees.

1 25. In meetings, Plaintiff's manager is regularly dismissive of her contributions to  
2 MICROSOFT. Other similarly situated males' contributions are not similarly dismissed or  
3 criticized.

4 26. Plaintiff's manager touched her inappropriately and commented on her body.

5 27. Despite Plaintiff notifying the Human Resources Department at MICROSOFT in June  
6 2011 of the harassing and discriminatory conduct to which she is being subjected, nothing was  
7 done by MICROSOFT to remedy the situation.

8 28. In September 2011, Plaintiff elected to and received approval to take her earned two  
9 month merit sabbatical that is awarded to exceptional performers. Before leaving for sabbatical,  
10 Plaintiff was harassed by her manager for taking the sabbatical and for not being available to  
11 work during the duration of the sabbatical. Based on information and belief, other similarly  
12 situated males have not been similarly harassed about taking their earned sabbaticals.

13 29. Based on information and belief, MICROSOFT has a pattern and practice of treating  
14 female employees differently than male employees in the terms and conditions of their  
15 employment.

16 30. In September 2011, Plaintiff, along with several other female colleagues employed by  
17 MICROSOFT, filed an internal complaint of gender discrimination with MICROSOFT.

18 31. In November 2011, Plaintiff timely filed a complaint with the California Department of  
19 Fair Employment and Housing ("DFEH") and received the "Right to Sue." The Complaint of  
20 Discrimination and the Right to Sue letter have been served on MICROSOFT.

21 32. Despite notifying MICROSOFT of the harassing and discriminatory conduct to which  
22 Plaintiff has been, and continues to be subjected, MICROSOFT has not corrected the situation.

23 33. MICROSOFT has failed, and continues to fail, to take prompt action to correct the  
24 discriminatory and harassing work environment. As a result, Plaintiff has been on an extended  
25 leave of absence without work which has prompted colleagues and coworkers to inquire into her  
situation. As a result, she has suffered damage to her reputation and to her ability to work at  
MICROSOFT.

1 34. MICROSOFT has failed, and continues to fail, to take reasonable steps to expedite the  
2 investigation into Plaintiff's complaint of gender discrimination. Despite Plaintiff being told that  
3 the investigation of her September 2011 internal complaint would be completed in two weeks, as  
4 of the date of the filing of this Complaint, the investigation has yet to be completed.

5 35. At all relevant times, Plaintiff has been ready, willing, and able to perform the duties of  
6 her position as West Region Business Manager, as well as to transfer to and perform the duties of  
7 another position of equal or higher grade level, requiring similar skills and experience.

8 36. Plaintiff in good faith has performed, and continues to perform, all of the obligations of  
9 her employment, except to the extent that she has been prevented from doing so by Defendants.

10 37. As a consequence of Defendants' actions, Plaintiff has suffered general and special  
11 damages, including lost salary, benefits, bonuses, other employee benefits, lost career  
12 opportunities and loss of reputation.

13 38. As a further consequence of Defendants' actions, Plaintiff has suffered and continues to  
14 suffer extreme anguish, humiliation, and emotional distress.

15 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

16 **FIRST CAUSE OF ACTION**  
17 **(Discrimination Based on Gender under FEHA)**  
18 **(Against MICROSOFT Only)**

19 39. Plaintiff hereby incorporates by reference paragraphs 1 through 38, inclusive, of this  
20 Complaint as though fully set forth herein.

21 40. This cause of action is brought pursuant to California Government Code §§12900, *et seq.*,  
22 and the common law of the State of California, which prohibit discrimination in employment on  
23 the basis of gender.

24 41. At all relevant times, MICROSOFT was, and is, a corporation subject to suit under the  
25 California Fair Employment and Housing Act, Cal' Gov't Code § 12940, *et seq.* (hereinafter  
"FEHA") and the common law of the State of California, in that it is a business with five or more  
employees doing business in the State of California.

42. Plaintiff timely filed a complaint with the California Department of Fair Employment and  
Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. The

1 Complaint of Discrimination and the Right to Sue letter have been served on MICROSOFT and  
2 Plaintiff timely files this action.

3 43. Plaintiff alleges that her gender was, and continues to be, a determining factor in the  
4 terms and conditions of her employment. Similarly-situated male employees have not been  
5 subjected to the same or similar unfavorable treatment.

6 44. MICROSOFT discriminated against Plaintiff because of her gender in, but not limited to,  
7 the following ways:

- 8 a. Plaintiff has been, and continues to be, treated differently than other similarly  
9 situated males in the terms and conditions of her employment;
- 10 b. Plaintiff has been, and continues to be, held to higher performance standards than  
11 other similarly situated males;
- 12 c. Despite outperforming other similarly situated males, Plaintiff was ranked lower  
13 than other similarly situated males on her last annual performance review, all to  
14 Plaintiff's detriment;
- 15 d. MICROSOFT did nothing to prevent, remedy or correct the discrimination before  
16 or after receiving both the internal complaint and the DFEH complaint; and,
- 17 e. Plaintiff has not been given the opportunity to return to work in a discrimination  
18 free workplace at MICROSOFT.

19 45. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
20 Plaintiff has suffered general and special damages, including lost salary, benefits, bonuses, other  
21 employee benefits, lost career opportunities and loss of reputation, in an amount in excess of the  
22 jurisdictional minimum of this Court, the precise amount to be proven at trial.

23 46. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
24 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
25 extent of which is not fully known at this time and the amount of damages not yet fully  
ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

1 47. The conduct of MICROSOFT, its agents, and employees as described herein was  
2 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
3 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

4 48. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
5 Prayer for Relief below.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**  
8 **(Harassment Based on Gender in Violation of FEHA)**  
9 **(Against ALL Defendants)**

10 49. By this reference, Plaintiff hereby incorporates paragraphs 1 through 48, inclusive, of this  
11 Complaint as if set forth herein.

12 50. This cause of action is brought pursuant to California Government Code §§12940, *et seq.*,  
13 and the common law of the State of California.

14 51. At all times relevant hereto, MICROSOFT was, and is, a corporation, which employed 5  
15 or more persons, engaged in an industry affecting commerce, bringing it within the provisions of  
16 California Government Code §§12900, *et seq.*, and the common law of the State of California,  
17 which prohibit employers from harassing an employee on the basis of an employee's gender.

18 52. Plaintiff timely filed a complaint with the California Department of Fair Employment and  
19 Housing ("DFEH"), against MICROSOFT. Plaintiff received a Plaintiff's "Right to Sue" from  
20 the DFEH. The Complaint of Harassment and the Right to Sue letter have been served on the  
21 Defendants and Plaintiff timely files this action.

22 53. Defendants engaged in, but not limited to, the following actions with the intent of  
23 harassing Plaintiff on account of her gender:

- 24 a. Intending to give Plaintiff an undeserved and career ending negative performance  
25 review;
- b. Giving Plaintiff's performance an undeserved low performance review;
- c. Making gender based assumptions about Plaintiff's ability to do her job;
- d. Deaneaning Plaintiff in private and in public because of her gender, female:

- 1 e. Criticizing Plaintiff for not working during her prescheduled and pre-approved  
2 sabbatical;
- 3 f. Dismissing Plaintiff's contributions and expertise while deferring to similarly  
4 situated, less qualified males; and.
- 5 g. By not undertaking steps, temporarily or permanently, to prevent, correct or  
6 remedy the situation after MICROSOFT was given both internal notice of the  
7 discrimination and harassment as well as notice by way of the DFEH complaint.

8 54. The managers and agents of MICROSOFT knew or should have known of the above-  
9 mentioned harassment, but MICROSOFT failed to take immediate and appropriate corrective  
10 action to stop the harassment. MICROSOFT also failed, and continues to fail, to take all  
11 reasonable steps to prevent such harassment from occurring and has failed to undertake and  
12 conclude an investigation into Plaintiff's complaints.

13 55. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
14 Plaintiff has suffered, and continues to suffer, general and special damages, including lost salary,  
15 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
16 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
17 trial.

18 56. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
19 has suffered, and continues to suffer, extreme anguish, humiliation, and emotional distress, the  
20 extent of which is not fully known at this time and the amount of damages not yet fully  
21 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

22 57. The conduct of MICROSOFT, its agents, and employees as described herein was  
23 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
24 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

25 58. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
Prayer for Relief below.

**WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.







1 employee benefits, lost career opportunities and loss of reputation, in an amount in excess of the  
2 jurisdictional minimum of this Court, the precise amount to be proven at trial.

3 65. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
4 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
5 extent of which is not fully known at this time and the amount of damages not yet fully  
6 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

7 66. The conduct of MICROSOFT, its agents, and employees as described herein was  
8 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
9 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

10 67. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
11 Prayer for Relief below.

12 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

13 **FOURTH CAUSE OF ACTION**  
14 **(Failure to Prevent and/or Remedy Discrimination and Harassment under FEHA)**  
15 **(Against MICROSOFT Only)**

16 68. By this reference, Plaintiff hereby incorporates paragraphs 1 through 67, inclusive, of this  
17 Complaint as if set forth herein.

18 69. This cause of action is brought pursuant to California Government Code §§ 12900 *et seq.*,  
19 and the common law of the State of California, which makes it an unlawful employment practice  
20 for an employer "to fail to take all reasonable steps necessary to prevent discrimination and  
21 harassment from occurring."

22 70. At all times relevant hereto, MICROSOFT was a corporation, which employed 5 or more  
23 persons, engaged in an industry affecting commerce, bringing it within the provisions of  
24 California Government Code §§ 12900, *et seq.*, and the common law of the State of California,  
25 which places a duty on employers to prevent discrimination and harassment from occurring on  
the basis of gender.

71. Plaintiff timely filed a complaint with the California Department of Fair Employment and  
Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. The

1 Complaint of Discrimination and the Right to Sue letter have been served on the Defendants and  
2 Plaintiff timely files this action.

3 72. MICROSOFT owed, and continues to owe, a duty to Plaintiff to prevent discrimination  
4 and harassment from occurring against her in their employment relationship.

5 73. In September 2011, Plaintiff participated with several other female colleagues in the  
6 filing of an internal complaint of gender discrimination.

7 74. In November 2011, Plaintiff timely filed a complaint with the California Department of  
8 Fair Employment and Housing ("DFEH") and received the "Right to Sue" from the DFEH. The  
9 Complaint of Discrimination and the Right to Sue letter have been served on MICROSOFT.

10 75. MICROSOFT knows, or should know, that Plaintiff was and is being harassed, retaliated  
11 against and discriminated against on the basis of her gender, female, in the terms and conditions  
12 of her employment.

13 76. MICROSOFT has failed, and continues to fail, to take prompt action to correct the  
14 discriminatory and harassing work environment.

15 77. MICROSOFT has failed, and continues to fail, to take reasonable steps to expedite the  
16 investigation into Plaintiff's complaints. Despite Plaintiff being told that the investigation into  
17 the internal September 2011 complaint would be completed in two weeks, as of the date of the  
18 filing of this Complaint, the investigation has yet to be completed.

19 78. MICROSOFT breached, and continues to breach, its duty to Plaintiff by failing to take  
20 any steps to prevent the discrimination and harassment from occurring.

21 79. MICROSOFT breached, and continues to breach, its duty to Plaintiff by failing to take  
22 prompt action to correct the discriminatory and harassing work environment.

23 80. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
24 Plaintiff has suffered general and special damages, including lost salary, benefits, bonuses, other  
25 employee benefits, lost career opportunities and loss of reputation, in an amount in excess of the  
jurisdictional minimum of this Court, the precise amount to be proven at trial.

81. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the

1 extent of which is not fully known at this time and the amount of damages not yet fully  
2 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

3 82. The conduct of MICROSOFT, its agents, and employees as described herein was  
4 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
5 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

6 83. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
7 Prayer for Relief below.

8 **WHEREFORE.** Plaintiff prays for judgment against Defendants as hereinafter set forth.

9 **FIFTH CAUSE OF ACTION**  
10 **(For Breach of Contract)**  
11 **(Against MICROSOFT only)**

12 84. By this reference, Plaintiff hereby incorporates paragraphs 1 through 83, inclusive, of  
13 this Complaint as if set forth herein.

14 85. Plaintiff and Defendants entered into an employment agreement that was partly oral,  
15 partly written and partly implied-in-fact.

16 86. Plaintiff, at all times, has been, and continues to be, ready, willing and able to perform  
17 all of the conditions of the agreement to be performed by her.

18 87. Defendant breached the employment agreement by, but not limited to:

- 19 a. Specifying the goals for Plaintiff's performance then evaluating her performance  
20 under different and unknown criteria;
- 21 b. The manner in which the performance reviews were conducted relative to the goals  
22 that were given to her and the manner in which the ratings were calibrated as to  
23 Plaintiff's performance compared to the performance of other employees;
- 24 c. Subjecting Plaintiff to abusive, demeaning behavior on a regular basis;
- 25 d. Failing to correct the abusive and demeaning situation when Plaintiff lodged her  
several complaints with Human Resources and with MICROSOFT's agents;
- e. Disregarding the obligations of supervisors at MICROSOFT in regards to diversity  
and performance standards;
- f. Treating Plaintiff differently in the terms and conditions of employment; and,

1 g. Failing and refusing to adhere to its own policies and practices in its treatment of  
2 Plaintiff.

3 88. As a direct and proximate result of Defendant's unlawful conduct as herein alleged,  
4 Plaintiff has suffered substantial damages, including lost salary, benefits, bonuses and other  
5 employee benefits, in an amount in excess of the jurisdictional minimum of this Court, the  
6 precise amount to be proven at trial.

7 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

8 **SIXTH CAUSE OF ACTION**  
9 **(Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**  
10 **(Against MICROSOFT only)**

11 89. By this reference, Plaintiff hereby incorporates paragraphs 1 through 88, inclusive, of  
12 this Complaint as if set forth herein.

13 90. In every contract with employees in the State of California, there exists a covenant of  
14 good faith and fair dealing, requiring the employer not to take any action in bad faith to deny the  
15 employee compensation to which she is reasonably entitled.

16 91. As a result of the employment relationship which exists between Plaintiff and  
17 Defendants, the express and implied contracts made in connection therewith, the acts, conduct,  
18 promises and communications which resulted in said contract, and by operation of the law of the  
19 State of California, Defendants have covenanted and promised to act in good faith towards and  
20 deal fairly with Plaintiff.

21 92. Defendants have breached the covenant of good faith and fair dealing, by their conduct  
22 including, but not limited to, the following:

- 23 a. Arbitrarily and capriciously ranking Plaintiff's performance lower than other  
24 similarly situated males despite Plaintiff having achieved higher results than the  
25 other similarly situated males;
- 26 b. By adopting and implementing a subjective formula for evaluating, ranking and  
27 downgrading the performance of employees who meet and/or exceed the goals  
28 assigned to them by management; and,
- 29 c. Failing and refusing to treat Plaintiff fairly and in good faith.

1 93. Defendants' breach of the covenant of good faith and fair dealing was a substantial  
2 factor in causing damage and injury to the Plaintiff. As a direct and proximate result of  
3 Defendants' unlawful conduct as herein alleged. Plaintiff has suffered substantial damages,  
4 including lost salary, benefits, bonuses and other employee benefits, in an amount in excess of  
5 the jurisdictional minimum of this Court, the precise amount to be proven at trial.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

7 **INJUNCTIVE RELIEF**

8 94. Plaintiff has suffered irreparable injury and immediate harm due to Defendants' acts.  
9 Plaintiff has no adequate legal remedy. In addition to the other relief requested in this Complaint,  
10 Plaintiff seeks injunctive relief enjoining Defendants from failing to prevent, remedy and correct  
11 the discrimination, harassment and retaliation, and from continuing to discriminate against and  
12 harass Plaintiff. Plaintiff further requests injunctive relief requiring that Defendants advise  
13 employees of all goals by which their performance will be measured at the time their  
14 performance reviews are conducted. Money damages will not fully compensate Plaintiff for the  
15 harm she has suffered.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff S. ZODY prays for judgment against Defendants, and  
18 MICROSOFT in particular, as follows:

19 1. For a judgment awarding compensatory damages including lost compensation and lost  
20 benefits in excess of the jurisdictional minimum of this Court and according to proof pursuant to  
21 Plaintiff's First, Second, Third, Fourth, Fifth and Sixth Causes of Action according to proof at  
22 trial;

23 2. For a judgment awarding damages for emotional distress pursuant to Plaintiff's First,  
24 Second, Third, and Fourth Causes of Action according to proof at trial;

25 3. For a judgment awarding punitive damages pursuant to Plaintiff's First, Second, Third  
and Fourth Causes of Action according to proof at trial;

1 4. For a judgment awarding attorneys' fees and costs under California Government Code  
2 §12965. under Plaintiff's First, Second, Third and Fourth Causes of Action and Plaintiff's  
3 Request for Injunctive Relief;

4 5. For prejudgment interest pursuant to California Civil Code §§ 3287, 3288 and 3291 on all  
5 amounts claimed pursuant to all causes of action;

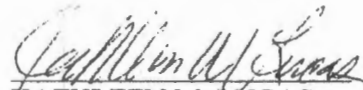
6 6. For injunctive relief enjoining Defendants from failing to prevent, remedy and correct the  
7 discrimination, harassment and retaliation, and from continuing to discriminate against and  
8 harass Plaintiff pursuant to Plaintiff's First, Second, Third, and Fourth Causes of Action;

9 7. For injunctive relief requiring that Defendants advise employees of all goals by which  
10 their performance will be measured at the time their performance reviews are conducted; and.

11 8. For such other and further relief as the Court shall deem just and proper.

12 Date: January 12, 2012

THE LUCAS LAW FIRM



KATHLEEN M. LUCAS  
SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY

16 **PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY**

17 As to all claims allowing for trial by jury, Plaintiff hereby demands a trial by jury.

18 Date: January 12, 2012

THE LUCAS LAW FIRM



KATHLEEN M. LUCAS  
SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY

1 KATHLEEN M. LUCAS (Bar No. 80339)  
2 SHAWNA B. CASEBIER (Bar No. 267782)  
3 THE LUCAS LAW FIRM  
4 180 Montgomery Street, Suite 2000  
San Francisco, California 94104  
Tel: (415) 402-0200  
Fax: (415) 402-0400

5 Attorneys for Plaintiff,  
6 S. ZODY

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

FEB 08 2012

CLERK OF THE COURT  
BY: MARY ANN MORAN  
Deputy Clerk

7  
8 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
9 **IN THE COUNTY OF SAN FRANCISCO**  
10 **UNLIMITED CIVIL JURISDICTION**

11 S. ZODY

12 Plaintiff,

13 vs.

14 **MICROSOFT CORPORATION AND**  
15 **DOES 1-25, INCLUSIVE,**

16 Defendants.

Case No.: CGC-12-517288

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND REQUEST FOR  
INJUNCTIVE RELIEF**

- 1) EMPLOYMENT DISCRIMINATION: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 2) HARASSMENT: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 3) RETALIATION IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 4) FAILURE TO PREVENT AND/OR REMEDY DISCRIMINATION AND HARASSMENT IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 5) BREACH OF CONTRACT;
- 6) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 7) CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY; AND,
- 8) INJUNCTIVE RELIEF;

**DEMAND FOR JURY TRIAL**



1 Plaintiff S. ZODY hereby alleges:

2 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

3 1. S. ZODY (hereinafter, "ZODY" or "Plaintiff"), at all relevant times mentioned herein,  
4 was, and is, a resident of the State of California. ZODY was employed as West Region Business  
5 Manager of Defendant MICROSOFT CORPORATION.

6 2. MICROSOFT CORPORATION (hereinafter, "MICROSOFT," "the company,"  
7 "Defendant" or included in "Defendants") is a publicly traded, multinational corporation that  
8 develops, manufactures, licenses, and supports a wide range of products and services  
9 predominantly related to computing. MICROSOFT is registered to do business in the State of  
10 California and does business throughout the State of California. MICROSOFT maintains offices  
11 in the City and County of San Francisco, State of California.

12 3. Defendants DOES 1-25 are sued herein under fictitious names. Their true names and  
13 capacities are unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges that  
14 each of these fictitiously named Defendants is responsible in some way for the occurrences  
15 herein alleged and Plaintiff's damages as herein alleged were caused by Defendants. Plaintiff  
16 will seek leave of court to provide the true identities of DOES 1-25 when they become known.

17 4. Plaintiff is informed and believes, and based on that information and belief alleges, that at  
18 all relevant times herein, each of the Defendants and DOES 1-25 was the agent, alter-ego, joint  
19 employer, ostensible agent for, employee of, and/or joint venturer with, or working in concert  
20 with, his/her co-defendants and was acting within the course and scope of such agency,  
21 employment and/or joint venture or concerted activity. To the extent that said conduct was  
22 perpetrated by certain Defendants, the remaining Defendants and DOES confirmed, adopted,  
23 approved, and/or ratified the same.

24 5. Plaintiff was hired by MICROSOFT in 2000 and was regularly promoted during her  
25 career at MICROSOFT.

26 6. Plaintiff is a female.

27 7. Over the course of Plaintiff's career at MICROSOFT, she was consistently ranked a top  
28 performer across all of the divisions she worked and was the recipient of multiple "gold star"



1 awards during her tenure, including a two month sabbatical called the Microsoft Achievement  
2 Award. These awards were for exemplary performance.

3 8. Over the course of Plaintiff's career at MICROSOFT, Plaintiff consistently exceeded the  
4 goals assigned to her and was rewarded with promotions and increased compensation.

5 9. Over the course of Plaintiff's career at MICROSOFT, Plaintiff was repeatedly recruited  
6 for promotions within different divisions and relocated to five different cities within the United  
7 States to assume new responsibilities at MICROSOFT.

8 10. In October 2010, Plaintiff was recruited for the job of West Region Business Manger  
9 responsible for California, reporting to the Regional Vice President, a male.

10 11. The Regional Vice President works out of MICROSOFT's offices in the City of  
11 Mountain View, County of Santa Clara.

12 12. While reporting to the Regional Vice President, Plaintiff was subjected to harassing and  
13 discriminatory actions on the basis of her gender, female. These actions hindered her ability to  
14 do her job and affected the terms and conditions of her employment.

15 13. While reporting to the Regional Vice President, Plaintiff was subjected to harassing,  
16 discriminatory and retaliatory actions because she complained about the discrimination and  
17 harassment. These actions hindered her ability to do her job, affected the terms and conditions of  
18 her employment and resulted in a constructive termination from her position.

19 14. Defendants treated Plaintiff differently than other similarly situated male employees in  
20 the terms and conditions of her employment because she is a female.

21 15. Defendants harassed Plaintiff on the basis of her gender, female.

22 16. Despite outperforming similarly situated males, on Plaintiff's last performance review  
23 her manager unfairly ranked her lower than other similarly situated males, and lower than the  
24 results on her performance warranted as compared to others.

25 17. Based on information and belief, MICROSOFT requires its managers to follow a bell  
curve distribution model in providing annual performance ratings to its employees. The model  
requires that only 20% of employees receive the highest rating of "1," 20% receive a "2," 40%  
receive a "3," 13% receive a "4," and 7% receive the lowest rating of "5." Based on information

1 and belief, the ratings are to reflect the environment in which results were achieved and the  
2 impact of an individual's performance relative to peers on the team. Based on information and  
3 belief, managers have unfettered discretion in calibrating the ratings.

4 18. Based on information and belief, the rating an employee receives determines the extent to  
5 which an employee's salary will be increased and bonuses distributed.

6 19. Based on information and belief, a rating of a "1" or "2" is to reflect "greatly surpassing  
7 expectations" and "surpassing expectations," respectively. A rating of a "3" is to reflect  
8 "successfully delivering against expectations."

9 20. For fiscal year 2011, Plaintiff surpassed all of the performance goals assigned to her.

10 21. Despite meeting all of her goals and without providing any rationale, a manager, without  
11 adequate explanation, told Plaintiff that her supervisor intended to rate her as the "token 5"  
12 within her group. In response to receiving this information, Plaintiff initiated several discussions  
13 with her manager about the unfairness of such a rating given Plaintiff's exceptional performance  
14 throughout the year. After these discussions with her supervisor, Plaintiff was given a "3" rating.

15 22. Based on information and belief, Plaintiff's performance, as compared to others, was  
16 deserving of a rating of "2."

17 23. Due to the actions and behavior of the Regional Vice President, including the unfair and  
18 undeserved performance ranking, Plaintiff's ability to advance in her career at MICROSOFT  
19 was restricted by the discrimination and harassment. As a result, she was denied additional  
20 increases in her base salary and bonus amounts to which she otherwise would have been entitled.

21 24. On a regular basis, Plaintiff was subjected in private and public to demeaning, abusive,  
22 gender-based criticism by her manager. This affected Plaintiff's ability to perform her duties and  
23 to obtain a promotion, increase her compensation and to move into other positions at  
24 MICROSOFT.

25 25. Routinely, Plaintiff's manager blamed her for errors or omissions that were not true  
and/or were not her fault. Plaintiff's manager, after these accusations, used the false statements  
to deny Plaintiff bonuses, stock and other compensation while awarding them to similarly  
situated and/or less qualified male employees.

1 26. In meetings, Plaintiff's manager was regularly dismissive of her contributions to  
2 MICROSOFT. Other similarly situated males' contributions were not similarly dismissed or  
3 criticized.

4 27. Plaintiff's manager touched her inappropriately and commented on her body.

5 28. Despite Plaintiff notifying the Human Resources Department at MICROSOFT in June  
6 2011 of the harassing and discriminatory conduct to which she was being subjected, nothing was  
7 done by MICROSOFT to remedy the situation.

8 29. In September 2011, Plaintiff elected to and received approval to take her earned two  
9 month merit sabbatical that is awarded to exceptional performers. Before leaving for sabbatical,  
10 Plaintiff was harassed by her manager for taking the sabbatical and for not being available to  
11 work during the duration of the sabbatical. Based on information and belief, other similarly  
12 situated males have not been similarly harassed about taking their earned sabbaticals.

13 30. Based on information and belief, MICROSOFT has a pattern and practice of treating  
14 female employees differently than male employees in the terms and conditions of their  
15 employment.

16 31. In September 2011, Plaintiff, along with four other female colleagues employed by  
17 MICROSOFT, filed an internal complaint of gender discrimination with MICROSOFT.

18 32. In November 2011, Plaintiff timely filed a complaint with the California Department of  
19 Fair Employment and Housing ("DFEH") and received the "Right to Sue." The Complaint of  
20 Discrimination and the Right to Sue letter have been served on MICROSOFT.

21 33. Despite notifying MICROSOFT of the harassing and discriminatory conduct to which  
22 Plaintiff was subjected, MICROSOFT did not alter or correct the situation.

23 34. MICROSOFT failed to take prompt action to correct the discriminatory and harassing  
24 work environment. As a result, until January 23, 2012, Plaintiff was on an extended leave of  
25 absence without work which prompted colleagues and coworkers to inquire into her situation. As  
a result, she suffered damage to her reputation and to her ability to work at MICROSOFT.

35. MICROSOFT failed to take all reasonable steps to expedite the investigation into  
Plaintiff's complaint of gender discrimination. Despite Plaintiff being told that the investigation

1 of her September 2011 internal complaint would be completed in two weeks, between September  
2 2011 and January 2012 nothing was done to alter or correct the situation.

3 36. MICROSOFT failed to take all reasonable steps to prevent the continued discrimination,  
4 harassment and subsequent retaliation.

5 37. MICROSOFT took no concrete steps to ensure that Plaintiff's manager did not retaliate  
6 against her for lodging her complaints against him.

7 38. When Plaintiff returned to her position in January 2012, the harassment had not ceased.  
8 MICROSOFT continued to permit the intolerable working conditions to exist. Other than a few  
9 platitudes, MICROSOFT did nothing to assure Plaintiff that she would not be subjected to  
10 gender harassment, discrimination or retaliation for having filed the Complaints.

11 39. On February 7, 2012, Plaintiff was constructively terminated from her position due to the  
12 intolerable working conditions.

13 40. On February 7, 2012, Plaintiff timely filed a second Complaint with the California  
14 Department of Fair Employment and Housing ("DFEH") and received the "Right to Sue." The  
15 Complaint of Discrimination and the Right to Sue letter will be timely served on MICROSOFT.

16 41. At all relevant times, Plaintiff has been ready, willing, and able to perform the duties of  
17 her position as West Region Business Manager, as well as to transfer to and perform the duties of  
18 another position of equal or higher grade level, requiring similar skills and experience.

19 42. Plaintiff in good faith performed all of the obligations of her employment, except to the  
20 extent that she was prevented from doing so by Defendants.

21 43. As a consequence of Defendants' actions, Plaintiff has suffered, and continues to suffer,  
22 general and special damages, including lost salary, benefits, bonuses, other employee benefits,  
23 lost career opportunities and loss of reputation.

24 44. As a further consequence of Defendants' actions, Plaintiff has suffered, and continues to  
25 suffer, extreme anguish, humiliation, and emotional distress.

**WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**FIRST CAUSE OF ACTION**  
**(Discrimination Based on Gender under FEHA)**  
**(Against MICROSOFT Only)**

45. Plaintiff hereby incorporates by reference paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

46. This cause of action is brought pursuant to California Government Code §§12900, *et seq.*, and the common law of the State of California, which prohibit discrimination in employment on the basis of gender.

47. At all relevant times, MICROSOFT was, and is, a corporation subject to suit under the California Fair Employment and Housing Act, Cal. Gov't Code § 12940, *et seq.* (hereinafter "FEHA") and the common law of the State of California, in that it is a business with five or more employees doing business in the State of California.

48. Plaintiff timely filed two Complaints with the California Department of Fair Employment and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One Complaint of Discrimination and the Right to Sue letter have been served on Defendants and the other will be timely served on Defendants. Accordingly, Plaintiff timely files this action.

49. Plaintiff alleges that her gender was a determining factor in the terms and conditions of her employment. Similarly-situated male employees have not been subjected to the same or similar unfavorable treatment.

50. MICROSOFT discriminated against Plaintiff because of her gender in, but not limited to, the following ways:

- a. Plaintiff was treated differently than other similarly situated males in the terms and conditions of her employment;
- b. Plaintiff was held to higher performance standards than other similarly situated males;
- c. Despite outperforming other similarly situated males, Plaintiff was ranked lower than other similarly situated males on her last annual performance review, all to Plaintiff's detriment;

- 1 d. MICROSOFT did nothing to prevent, remedy or correct the discrimination before  
2 or after receiving both the internal complaint and the DFEH complaint;  
3 e. Plaintiff was not provided with a workplace free of discrimination, harassment  
4 and retaliation; and,  
5 f. Plaintiff was constructively terminated from her position.

6 51. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
7 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
8 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
9 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
10 trial.

11 52. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
12 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
13 extent of which is not fully known at this time and the amount of damages not yet fully  
14 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

15 53. The conduct of MICROSOFT, its agents, and employees as described herein was  
16 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
17 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

18 54. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
19 Prayer for Relief below:

20 WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth:

21 **SECOND CAUSE OF ACTION**  
22 **(Harassment Based on Gender in Violation of FEHA)**  
23 **(Against ALL Defendants)**

24 55. By this reference, Plaintiff hereby incorporates paragraphs 1 through 54, inclusive, of this  
25 Complaint as if set forth herein.

56. This cause of action is brought pursuant to California Government Code §§12940, *et seq.*,  
and the common law of the State of California.

57. At all times relevant hereto, MICROSOFT was, and is, a corporation, which employed 5  
or more persons, engaged in an industry affecting commerce, bringing it within the provisions of



1 California Government Code §§12900, *et seq.*, and the common law of the State of California,  
2 which prohibit employers from harassing an employee on the basis of an employee's gender.

3 58. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
4 and Housing ("DFEH") against MICROSOFT. Plaintiff received a Plaintiff's "Right to Sue"  
5 from the DFEH. One Complaint of Harassment and the Right to Sue letter have been served on  
6 the Defendants and the other will be timely served on the Defendants. Accordingly, Plaintiff  
7 timely files this action.

8 59. Defendants engaged in, but not limited to, the following actions with the intent of  
9 harassing Plaintiff on account of her gender:

- 10 a. Intending to give Plaintiff an undeserved and career ending negative performance  
11 review;
- 12 b. Giving Plaintiff's performance an undeserved low performance review;
- 13 c. Making gender based assumptions about Plaintiff's ability to do her job;
- 14 d. Demeaning Plaintiff in private and in public because of her gender, female;
- 15 e. Criticizing Plaintiff for not working during her prescheduled and pre-approved  
16 sabbatical;
- 17 f. Inappropriately touching Plaintiff and commenting on her physical characteristics;
- 18 g. Dismissing Plaintiff's contributions and expertise while deferring to similarly  
19 situated, less qualified males;
- 20 h. By not undertaking steps, temporarily or permanently, to prevent, correct or  
21 remedy the situation after MICROSOFT was given both internal notice of the  
22 discrimination and harassment as well as notice by way of the DFEH complaint;
- 23 i. Failing to provide Plaintiff with a workplace free of discrimination, harassment  
24 and retaliation; and,
- 25 j. Constructively terminating Plaintiff from her position.

60. The managers and agents of MICROSOFT did the above acts or knew, or should have  
known, of the above-mentioned harassment, but MICROSOFT failed to take immediate and

1 appropriate corrective action to stop the harassment and to remedy the situation. MICROSOFT  
2 also failed to take all reasonable steps to prevent such harassment from occurring.

3 61. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
4 Plaintiff has suffered, and continues to suffer, general and special damages, including lost salary,  
5 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
6 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
7 trial.

8 62. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
9 has suffered, and continues to suffer, extreme anguish, humiliation, and emotional distress, the  
10 extent of which is not fully known at this time and the amount of damages not yet fully  
11 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

12 63. The conduct of MICROSOFT, its agents, and employees as described herein was  
13 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
14 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

15 64. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
16 Prayer for Relief below.

17 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

18 **THIRD CAUSE OF ACTION**  
19 **(Retaliation in Violation of FEHA)**  
20 **(Against MICROSOFT only)**

21 65. By this reference, Plaintiff hereby incorporates paragraphs 1 through 64, inclusive, of this  
22 Complaint as if set forth herein.

23 66. This Cause of Action is brought pursuant to California Government Code §§12900, *et*  
24 *seq.*, and the common law of the State of California which prohibits retaliation against  
25 employees for engaging in protected activity.

67. At all relevant times, MICROSOFT was, and is, an employer subject to suit under the  
California Fair Employment and Housing Act, Cal. Gov't Code § 12940, *et seq.* (hereinafter



1 "FEHA") and the common law of the State of California, in that it is a business with five or more  
2 employees doing business in the State of California.

3 68. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
4 and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One  
5 Complaint of Retaliation and the Right to Sue letter has been served on the Defendants, and the  
6 other will be timely served. Accordingly, Plaintiff timely files this action.

6 69. MICROSOFT retaliated against Plaintiff by, but not limited to:

- 7 a. Subjecting Plaintiff to conduct that was harassing, blaming and intimidating;
- 8 b. Giving Plaintiff an undeserved, negative performance review;
- 9 c. Denying Plaintiff bonuses and other benefits to which she was entitled;
- 10 d. Failing to adequately and timely investigate and respond to Plaintiff's internal  
11 complaint of gender discrimination and/or to Plaintiff's DFEH complaint;
- 12 e. Failing to take temporary and/or permanent steps to address and remedy  
13 Plaintiff's work situation while MICROSOFT investigated the complaint of  
14 gender discrimination;
- 15 f. Failing to take appropriate corrective action to remedy the situation;
- 16 g. Failing to provide Plaintiff with a workplace free of discrimination, harassment  
17 and retaliation; and,
- 18 h. Constructively terminating Plaintiff from her position.

17 70. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
18 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
19 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
20 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
21 trial.

21 71. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
22 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
23 extent of which is not fully known at this time, and the amount of damages not yet fully  
24 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

1 72. The conduct of MICROSOFT, its agents, and employees as described herein was  
2 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
3 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

4 73. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
Prayer for Relief below.

5 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

6 **FOURTH CAUSE OF ACTION**  
7 **(Failure to Prevent and/or Remedy Discrimination and Harassment under FEHA)**  
8 **(Against MICROSOFT Only)**

9 74. By this reference, Plaintiff hereby incorporates paragraphs 1 through 73, inclusive, of this  
Complaint as if set forth herein.

10 75. This cause of action is brought pursuant to California Government Code §§ 12900, *et seq.*,  
11 and the common law of the State of California, which makes it an unlawful employment practice  
12 for an employer "*to fail to take all reasonable steps necessary to prevent discrimination and*  
*harassment from occurring.*"

13 76. At all times relevant hereto, MICROSOFT was a corporation, which employed 5 or more  
14 persons, engaged in an industry affecting commerce, bringing it within the provisions of  
15 California Government Code §§ 12900, *et seq.*, and the common law of the State of California,  
16 which places a duty on employers to prevent discrimination and harassment from occurring on  
the basis of gender.

17 77. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
18 and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One  
19 Complaint of Discrimination and the Right to Sue letter have been served on the Defendants and  
20 the other will be timely served. Accordingly, Plaintiff timely files this action.

21 78. MICROSOFT owed a duty to Plaintiff to prevent discrimination and harassment from  
occurring against her in their employment relationship.

22 79. In September 2011, Plaintiff participated with several other female colleagues in the  
23 filing of an internal complaint of gender discrimination.  
24

1 80. In November 2011 and February 7, 2012, Plaintiff timely filed Complaints with the  
2 California Department of Fair Employment and Housing ("DFEH") and received the "Right to  
3 Sue" from the DFEH. One Complaint of Discrimination and the Right to Sue letter have been  
4 served on MICROSOFT and the other will be timely served on MICROSOFT.

5 81. MICROSOFT knows, or should know, that Plaintiff was being harassed, retaliated  
6 against and discriminated against on the basis of her gender, female, in the terms and conditions  
7 of her employment.

8 82. MICROSOFT failed, and continues to fail, to take prompt action to correct the  
9 discriminatory and harassing work environment.

10 83. MICROSOFT failed to take all reasonable steps to expedite the investigation into  
11 Plaintiff's complaints. Despite Plaintiff being told that the investigation into the internal  
12 September 2011 complaint would be completed in two weeks, between September 2011 and  
13 January 2012 nothing was done to alter the situation.

14 84. In January 2012, despite acknowledging that Plaintiff was subjected to harassment and  
15 was treated in an unprofessional, rude and abrasive manner on a regular basis, Plaintiff was  
16 directed to return to the discriminatory and harassing work environment by Human Resources.

17 85. MICROSOFT breached its duty to Plaintiff by failing to take any steps to prevent the  
18 discrimination, harassment and retaliation from occurring.

19 86. MICROSOFT breached its duty to Plaintiff by failing to take prompt action to correct the  
20 discriminatory and harassing work environment, resulting in retaliation against Plaintiff.

21 87. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
22 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
23 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
24 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
25 trial.

26 88. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
27 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress; the

1 extent of which is not fully known at this time and the amount of damages not yet fully  
2 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

3 89. The conduct of MICROSOFT, its agents, and employees as described herein was  
4 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
5 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

6 90. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
7 Prayer for Relief below.

8 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

9 **FIFTH CAUSE OF ACTION**  
10 **(For Breach of Contract)**  
11 **(Against MICROSOFT only)**

12 91. By this reference, Plaintiff hereby incorporates paragraphs 1 through 90, inclusive, of  
13 this Complaint as if set forth herein.

14 92. Plaintiff and Defendants entered into an employment agreement that was partly oral,  
15 partly written and partly implied-in-fact.

16 93. Plaintiff, at all times, has been, willing and able to perform all of the conditions of the  
17 agreement to be performed by her.

18 94. Defendant breached the employment agreement by, but not limited to:

- 19 a. Specifying the goals for Plaintiff's performance then evaluating her performance  
20 under different and unknown criteria;
- 21 b. The manner in which the performance reviews were conducted relative to the goals  
22 that were given to her and the manner in which the ratings were calibrated as to  
23 Plaintiff's performance compared to the performance of other employees;
- 24 c. Subjecting Plaintiff to abusive, demeaning behavior on a regular basis;
- 25 d. Failing to correct the abusive and demeaning situation when Plaintiff lodged her  
several complaints with Human Resources and with MICROSOFT's agents;
- e. Disregarding the obligations of supervisors at MICROSOFT in regards to diversity  
and performance standards;
- f. Treating Plaintiff differently in the terms and conditions of employment;

1 g. Failing, and refusing, to adhere to its own policies and practices in its treatment of  
2 Plaintiff; and,

3 h. Constructively terminating Plaintiff from her position.

4 95. As a direct and proximate result of Defendant's unlawful conduct as herein alleged,  
5 Plaintiff has suffered and continues to suffer substantial damages, including lost salary, benefits,  
6 bonuses and other employee benefits, in an amount in excess of the jurisdictional minimum of  
7 this Court, the precise amount to be proven at trial.

8 WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth.

9 **SIXTH CAUSE OF ACTION**

10 **(Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**  
11 **(Against MICROSOFT only)**

12 96. By this reference, Plaintiff hereby incorporates paragraphs 1 through 95, inclusive, of  
13 this Complaint as if set forth herein.

14 97. In every contract with employees in the State of California, there exists a covenant of  
15 good faith and fair dealing, requiring the employer not to take any action in bad faith to deny the  
16 employee compensation to which she is reasonably entitled.

17 98. As a result of the employment relationship which existed between Plaintiff and  
18 Defendants, the express and implied contracts made in connection therewith, the acts, conduct,  
19 promises and communications which resulted in said contract, and by operation of the law of the  
20 State of California, Defendants have covenanted and promised to act in good faith towards and  
21 deal fairly with Plaintiff.

22 99. Defendants have breached the covenant of good faith and fair dealing; by their conduct  
23 including, but not limited to, the following:

- 24 a. Arbitrarily and capriciously ranking Plaintiff's performance lower than other  
25 similarly situated males despite Plaintiff having achieved higher results than the  
other similarly situated males;
- b. By adopting and implementing a subjective formula for evaluating, ranking and  
downgrading the performance of employees who meet and/or exceed the goals  
assigned to them by management; and,

1 c. Failing and refusing to treat Plaintiff fairly and in good faith.

2 100. Defendants' breach of the covenant of good faith and fair dealing was a substantial  
3 factor in causing damage and injury to the Plaintiff. As a direct and proximate result of  
4 Defendants' unlawful conduct as herein alleged, Plaintiff has suffered and continues to suffer  
5 substantial damages, including lost salary, benefits, bonuses and other employee benefits, in an  
6 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
7 trial.

8 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth:

9 **SEVENTH CAUSE OF ACTION**  
10 **(Constructive Discharge in Violation of Public Policy)**  
11 **(Against MICROSOFT Only)**

12 101. By this reference, Plaintiff hereby incorporates paragraphs 1 through 100, inclusive, of  
13 this Complaint as if set forth herein.

14 102. Plaintiff was employed by MICROSOFT as West Region Business Manager.

15 103. The fundamental, substantial, and well grounded public policy of the State of California  
16 as expressed in the Fair Employment and Housing Act, California Government Code §§ 12920,  
17 12921, 12926, 12940, prohibits discrimination and harassment in employment on the basis of  
18 gender, and prohibits retaliation against an employee for engaging in protected activity.

19 104. Plaintiff was subjected to working conditions that violated public policy, in that  
20 Plaintiff was treated intolerably due to harassment and discrimination based on her gender, and  
21 retaliated against for filing internal and external complaints of discrimination and harassment.

22 105. MICROSOFT intentionally created or knowingly permitted these working conditions.

23 106. These working conditions were so intolerable that a reasonable person in Plaintiff's  
24 position would have had no reasonable alternative except to deem the employer's conduct a  
25 constructive discharge of her employment.

107. Because of the employer's actions, and its failure to act, Plaintiff was constructively  
terminated from her position of West Region Business Manager.

108. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
Plaintiff has suffered and continues to suffer general and special damages, including lost salary,



1 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
2 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
3 trial.

4 109. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
5 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
6 extent of which is not fully known at this time and the amount of damages not yet fully  
7 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

8 110. The conduct of MICROSOFT, its agents, and employees as described herein was  
9 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
10 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

11 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

12 **INJUNCTIVE RELIEF**

13 111. Plaintiff has suffered irreparable injury and immediate harm due to Defendants' acts.  
14 Plaintiff has no adequate legal remedy. In addition to the other relief requested in this Complaint,  
15 Plaintiff seeks injunctive relief enjoining Defendants from failing to prevent, remedy and correct  
16 the discrimination, harassment and retaliation of female employees at MICROSOFT. Plaintiff  
17 further requests injunctive relief requiring that Defendants advise employees of all goals by  
18 which their performance will be measured at the time their performance reviews are conducted.  
19 Money damages will not fully compensate Plaintiff for the harm she has suffered.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff S. ZODY prays for judgment against Defendants, and  
22 MICROSOFT in particular, as follows:

23 1. For a judgment awarding compensatory damages including lost compensation and lost  
24 benefits in excess of the jurisdictional minimum of this Court and according to proof pursuant to  
25 Plaintiff's First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action according to  
proof at trial;

2. For a judgment awarding damages for emotional distress pursuant to Plaintiff's First,  
Second, Third, Fourth and Seventh Causes of Action according to proof at trial;



1 3. For a judgment awarding punitive damages pursuant to Plaintiff's First, Second, Third,  
2 Fourth and Seventh Causes of Action according to proof at trial;

3 4. For a judgment awarding attorneys' fees and costs under California Government Code  
4 §12965, under Plaintiff's First, Second, Third and Fourth Causes of Action and Plaintiff's  
5 Request for Injunctive Relief;

6 5. For a judgment awarding attorney's fees and costs under California Code of Civil  
7 Procedure §1021.5 for enforcement of an important right affecting the public interest pursuant to  
8 Plaintiff's Seventh Cause of Action;

9 6. For prejudgment interest pursuant to California Civil Code §§ 3287, 3288 and 3291 on all  
10 amounts claimed pursuant to all causes of action;

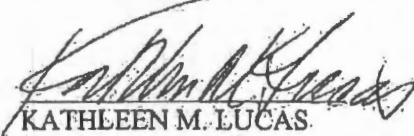
11 7. For injunctive relief enjoining Defendants from failing to prevent, remedy and correct the  
12 discrimination, harassment and retaliation, and from continuing to discriminate against and  
13 harass Plaintiff pursuant to Plaintiff's First, Second, Third, and Fourth Causes of Action;

14 8. For injunctive relief requiring that Defendants advise employees of all goals by which  
15 their performance will be measured at the time their performance reviews are conducted; and,

16 9. For such other and further relief as the Court shall deem just and proper.

17 Date: February 8, 2012

THE LUCAS LAW FIRM

  
KATHLEEN M. LUCAS  
SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY

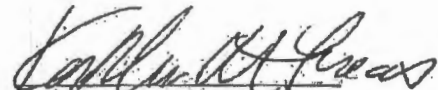
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY**

As to all claims allowing for trial by jury, Plaintiff hereby demands a trial by jury.

Date: February 8, 2012

THE LUCAS LAW FIRM



KATHLEEN M. LUCAS  
SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY

**EXHIBIT B**

1 KATHLEEN M. LUCAS (Bar No. 80339)  
2 SHAWNA B. CASEBIER (Bar No. 267782)  
3 THE LUCAS LAW FIRM  
4 180 Montgomery Street, Suite 2000  
5 San Francisco, California 94104  
6 Tel: (415) 402-0200  
7 Fax: (415) 402-0400

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

FEB 08 2012

CLERK OF THE COURT  
BY: MARY ANN MORAN  
Deputy Clerk

Attorneys for Plaintiff,  
S. ZODY

8 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 IN THE COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

11 S. ZODY

12 Plaintiff,

13 vs.

14 MICROSOFT CORPORATION AND  
15 DOES 1-25, INCLUSIVE,

16 Defendants.

Case No.: CGC-12-517288

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND REQUEST FOR  
INJUNCTIVE RELIEF**

- 1) EMPLOYMENT DISCRIMINATION: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 2) HARASSMENT: GENDER, CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 3) RETALIATION IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 4) FAILURE TO PREVENT AND/OR REMEDY DISCRIMINATION AND HARASSMENT IN VIOLATION OF CAL. GOV'T CODE §§ 12940, ET SEQ., "FEHA;"
- 5) BREACH OF CONTRACT;
- 6) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 7) CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY; AND,
- 8) INJUNCTIVE RELIEF.

**DEMAND FOR JURY TRIAL**

1 Plaintiff S. ZODY hereby alleges:

2 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

3 1. S. ZODY (hereinafter, "ZODY" or "Plaintiff"), at all relevant times mentioned herein,  
4 was, and is, a resident of the State of California. ZODY was employed as West Region Business  
5 Manager of Defendant MICROSOFT CORPORATION.

6 2. MICROSOFT CORPORATION (hereinafter, "MICROSOFT," "the company,"  
7 "Defendant" or included in "Defendants") is a publicly traded, multinational corporation that  
8 develops, manufactures, licenses, and supports a wide range of products and services  
9 predominantly related to computing. MICROSOFT is registered to do business in the State of  
10 California and does business throughout the State of California. MICROSOFT maintains offices  
11 in the City and County of San Francisco, State of California.

12 3. Defendants DOES 1-25 are sued herein under fictitious names. Their true names and  
13 capacities are unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges that  
14 each of these fictitiously named Defendants is responsible in some way for the occurrences  
15 herein alleged and Plaintiff's damages as herein alleged were caused by Defendants. Plaintiff  
16 will seek leave of court to provide the true identities of DOES 1-25 when they become known.

17 4. Plaintiff is informed and believes, and based on that information and belief alleges, that at  
18 all relevant times herein, each of the Defendants and DOES 1-25 was the agent, alter-ego, joint  
19 employer, ostensible agent for, employee of, and/or joint venturer with, or working in concert  
20 with, his/her co-defendants and was acting within the course and scope of such agency,  
21 employment and/or joint venture or concerted activity. To the extent that said conduct was  
22 perpetrated by certain Defendants, the remaining Defendants and DOES confirmed, adopted,  
23 approved, and/or ratified the same.

24 5. Plaintiff was hired by MICROSOFT in 2000 and was regularly promoted during her  
25 career at MICROSOFT.

26 6. Plaintiff is a female.

27 7. Over the course of Plaintiff's career at MICROSOFT, she was consistently ranked a top  
28 performer across all of the divisions she worked and was the recipient of multiple "gold star"

1 awards during her tenure, including a two month sabbatical called the Microsoft Achievement  
2 Award. These awards were for exemplary performance.

3 8. Over the course of Plaintiff's career at MICROSOFT, Plaintiff consistently exceeded the  
4 goals assigned to her and was rewarded with promotions and increased compensation.

5 9. Over the course of Plaintiff's career at MICROSOFT, Plaintiff was repeatedly recruited  
6 for promotions within different divisions and relocated to five different cities within the United  
7 States to assume new responsibilities at MICROSOFT.

8 10. In October 2010, Plaintiff was recruited for the job of West Region Business Manger  
9 responsible for California, reporting to the Regional Vice President, a male.

10 11. The Regional Vice President works out of MICROSOFT's offices in the City of  
11 Mountain View, County of Santa Clara.

12 12. While reporting to the Regional Vice President, Plaintiff was subjected to harassing and  
13 discriminatory actions on the basis of her gender, female. These actions hindered her ability to  
14 do her job and affected the terms and conditions of her employment.

15 13. While reporting to the Regional Vice President, Plaintiff was subjected to harassing,  
16 discriminatory and retaliatory actions because she complained about the discrimination and  
17 harassment. These actions hindered her ability to do her job, affected the terms and conditions of  
18 her employment and resulted in a constructive termination from her position.

19 14. Defendants treated Plaintiff differently than other similarly situated male employees in  
20 the terms and conditions of her employment because she is a female.

21 15. Defendants harassed Plaintiff on the basis of her gender, female.

22 16. Despite outperforming similarly situated males, on Plaintiff's last performance review  
23 her manager unfairly ranked her lower than other similarly situated males, and lower than the  
24 results on her performance warranted as compared to others.

25 17. Based on information and belief, MICROSOFT requires its managers to follow a bell  
curve distribution model in providing annual performance ratings to its employees. The model  
requires that only 20% of employees receive the highest rating of "1," 20% receive a "2," 40%  
receive a "3," 13% receive a "4," and 7% receive the lowest rating of "5." Based on information

1 and belief, the ratings are to reflect the environment in which results were achieved and the  
2 impact of an individual's performance relative to peers on the team. Based on information and  
3 belief, managers have unfettered discretion in calibrating the ratings.

4 18. Based on information and belief, the rating an employee receives determines the extent to  
5 which an employee's salary will be increased and bonuses distributed.

6 19. Based on information and belief, a rating of a "1" or "2" is to reflect "greatly surpassing  
7 expectations" and "surpassing expectations," respectively. A rating of a "3" is to reflect  
8 "successfully delivering against expectations."

9 20. For fiscal year 2011, Plaintiff surpassed all of the performance goals assigned to her.

10 21. Despite meeting all of her goals and without providing any rationale, a manager, without  
11 adequate explanation, told Plaintiff that her supervisor intended to rate her as the "token 5"  
12 within her group. In response to receiving this information, Plaintiff initiated several discussions  
13 with her manager about the unfairness of such a rating given Plaintiff's exceptional performance  
14 throughout the year. After these discussions with her supervisor, Plaintiff was given a "3" rating.

15 22. Based on information and belief, Plaintiff's performance, as compared to others, was  
16 deserving of a rating of "2."

17 23. Due to the actions and behavior of the Regional Vice President, including the unfair and  
18 undeserved performance ranking, Plaintiff's ability to advance in her career at MICROSOFT  
19 was restricted by the discrimination and harassment. As a result, she was denied additional  
20 increases in her base salary and bonus amounts to which she otherwise would have been entitled.

21 24. On a regular basis, Plaintiff was subjected in private and public to demeaning, abusive,  
22 gender-based criticism by her manager. This affected Plaintiff's ability to perform her duties and  
23 to obtain a promotion, increase her compensation and to move into other positions at  
24 MICROSOFT.

25 25. Routinely, Plaintiff's manager blamed her for errors or omissions that were not true  
and/or were not her fault. Plaintiff's manager, after these accusations, used the false statements  
to deny Plaintiff bonuses, stock and other compensation while awarding them to similarly  
situated and/or less qualified male employees.



1 26. In meetings, Plaintiff's manager was regularly dismissive of her contributions to  
2 MICROSOFT. Other similarly situated males' contributions were not similarly dismissed or  
3 criticized.

4 27. Plaintiff's manager touched her inappropriately and commented on her body.

5 28. Despite Plaintiff notifying the Human Resources Department at MICROSOFT in June  
6 2011 of the harassing and discriminatory conduct to which she was being subjected, nothing was  
7 done by MICROSOFT to remedy the situation.

8 29. In September 2011, Plaintiff elected to and received approval to take her earned two  
9 month merit sabbatical that is awarded to exceptional performers. Before leaving for sabbatical,  
10 Plaintiff was harassed by her manager for taking the sabbatical and for not being available to  
11 work during the duration of the sabbatical. Based on information and belief, other similarly  
12 situated males have not been similarly harassed about taking their earned sabbaticals.

13 30. Based on information and belief, MICROSOFT has a pattern and practice of treating  
14 female employees differently than male employees in the terms and conditions of their  
15 employment.

16 31. In September 2011, Plaintiff, along with four other female colleagues employed by  
17 MICROSOFT, filed an internal complaint of gender discrimination with MICROSOFT.

18 32. In November 2011, Plaintiff timely filed a complaint with the California Department of  
19 Fair Employment and Housing ("DFEH") and received the "Right to Sue." The Complaint of  
20 Discrimination and the Right to Sue letter have been served on MICROSOFT.

21 33. Despite notifying MICROSOFT of the harassing and discriminatory conduct to which  
22 Plaintiff was subjected, MICROSOFT did not alter or correct the situation.

23 34. MICROSOFT failed to take prompt action to correct the discriminatory and harassing  
24 work environment. As a result, until January 23, 2012, Plaintiff was on an extended leave of  
25 absence without work which prompted colleagues and coworkers to inquire into her situation. As  
a result, she suffered damage to her reputation and to her ability to work at MICROSOFT.

35. MICROSOFT failed to take all reasonable steps to expedite the investigation into  
Plaintiff's complaint of gender discrimination. Despite Plaintiff being told that the investigation

1 of her September 2011 internal complaint would be completed in two weeks, between September  
2 2011 and January 2012 nothing was done to alter or correct the situation.

3 36. MICROSOFT failed to take all reasonable steps to prevent the continued discrimination,  
4 harassment and subsequent retaliation.

5 37. MICROSOFT took no concrete steps to ensure that Plaintiff's manager did not retaliate  
6 against her for lodging her complaints against him.

7 38. When Plaintiff returned to her position in January 2012, the harassment had not ceased.  
8 MICROSOFT continued to permit the intolerable working conditions to exist. Other than a few  
9 platitudes, MICROSOFT did nothing to assure Plaintiff that she would not be subjected to  
10 gender harassment, discrimination or retaliation for having filed the Complaints.

11 39. On February 7, 2012, Plaintiff was constructively terminated from her position due to the  
12 intolerable working conditions.

13 40. On February 7, 2012, Plaintiff timely filed a second Complaint with the California  
14 Department of Fair Employment and Housing ("DFEH") and received the "Right to Sue." The  
15 Complaint of Discrimination and the Right to Sue letter will be timely served on MICROSOFT.

16 41. At all relevant times, Plaintiff has been ready, willing, and able to perform the duties of  
17 her position as West Region Business Manager, as well as to transfer to and perform the duties of  
18 another position of equal or higher grade level, requiring similar skills and experience.

19 42. Plaintiff in good faith performed all of the obligations of her employment, except to the  
20 extent that she was prevented from doing so by Defendants.

21 43. As a consequence of Defendants' actions, Plaintiff has suffered, and continues to suffer,  
22 general and special damages, including lost salary, benefits, bonuses, other employee benefits,  
23 lost career opportunities and loss of reputation.

24 44. As a further consequence of Defendants' actions, Plaintiff has suffered, and continues to  
25 suffer, extreme anguish, humiliation, and emotional distress.

**WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**FIRST CAUSE OF ACTION**  
**(Discrimination Based on Gender under FEHA)**  
**(Against MICROSOFT Only)**

45. Plaintiff hereby incorporates by reference paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

46. This cause of action is brought pursuant to California Government Code §§12900, *et seq.*, and the common law of the State of California, which prohibit discrimination in employment on the basis of gender.

47. At all relevant times, MICROSOFT was, and is, a corporation subject to suit under the California Fair Employment and Housing Act, Cal. Gov't Code § 12940, *et seq.* (hereinafter "FEHA") and the common law of the State of California, in that it is a business with five or more employees doing business in the State of California.

48. Plaintiff timely filed two Complaints with the California Department of Fair Employment and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One Complaint of Discrimination and the Right to Sue letter have been served on Defendants and the other will be timely served on Defendants. Accordingly, Plaintiff timely files this action.

49. Plaintiff alleges that her gender was a determining factor in the terms and conditions of her employment. Similarly-situated male employees have not been subjected to the same or similar unfavorable treatment.

50. MICROSOFT discriminated against Plaintiff because of her gender in, but not limited to, the following ways:

- a. Plaintiff was treated differently than other similarly situated males in the terms and conditions of her employment;
- b. Plaintiff was held to higher performance standards than other similarly situated males;
- c. Despite outperforming other similarly situated males, Plaintiff was ranked lower than other similarly situated males on her last annual performance review, all to Plaintiff's detriment;

- 1 d. MICROSOFT did nothing to prevent, remedy or correct the discrimination before  
2 or after receiving both the internal complaint and the DFEH complaint;  
3 e. Plaintiff was not provided with a workplace free of discrimination, harassment  
4 and retaliation; and,  
5 f. Plaintiff was constructively terminated from her position.

6 51. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
7 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
8 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
9 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
10 trial.

11 52. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
12 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
13 extent of which is not fully known at this time and the amount of damages not yet fully  
14 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

15 53. The conduct of MICROSOFT, its agents, and employees as described herein was  
16 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
17 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

18 54. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
19 Prayer for Relief below.

20 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**  
22 **(Harassment Based on Gender in Violation of FEHA)**  
23 **(Against ALL Defendants)**

24 55. By this reference, Plaintiff hereby incorporates paragraphs 1 through 54, inclusive, of this  
25 Complaint as if set forth herein.

56. This cause of action is brought pursuant to California Government Code §§12940, *et seq.*,  
and the common law of the State of California.

57. At all times relevant hereto, MICROSOFT was, and is, a corporation, which employed 5  
or more persons, engaged in an industry affecting commerce, bringing it within the provisions of

1 California Government Code §§12900, *et seq.*, and the common law of the State of California,  
2 which prohibit employers from harassing an employee on the basis of an employee's gender.

3 58. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
4 and Housing ("DFEH") against MICROSOFT. Plaintiff received a Plaintiff's "Right to Sue"  
5 from the DFEH. One Complaint of Harassment and the Right to Sue letter have been served on  
6 the Defendants and the other will be timely served on the Defendants. Accordingly, Plaintiff  
7 timely files this action.

8 59. Defendants engaged in, but not limited to, the following actions with the intent of  
9 harassing Plaintiff on account of her gender:

- 10 a. Intending to give Plaintiff an undeserved and career ending negative performance  
11 review;
- 12 b. Giving Plaintiff's performance an undeserved low performance review;
- 13 c. Making gender based assumptions about Plaintiff's ability to do her job;
- 14 d. Demeaning Plaintiff in private and in public because of her gender, female;
- 15 e. Criticizing Plaintiff for not working during her prescheduled and pre-approved  
16 sabbatical;
- 17 f. Inappropriately touching Plaintiff and commenting on her physical characteristics;
- 18 g. Dismissing Plaintiff's contributions and expertise while deferring to similarly  
19 situated, less qualified males;
- 20 h. By not undertaking steps, temporarily or permanently, to prevent, correct or  
21 remedy the situation after MICROSOFT was given both internal notice of the  
22 discrimination and harassment as well as notice by way of the DFEH complaint;
- 23 i. Failing to provide Plaintiff with a workplace free of discrimination, harassment  
24 and retaliation; and,
- 25 j. Constructively terminating Plaintiff from her position.

26 60. The managers and agents of MICROSOFT did the above acts or knew, or should have  
27 known, of the above-mentioned harassment, but MICROSOFT failed to take immediate and  
28

1 appropriate corrective action to stop the harassment and to remedy the situation. MICROSOFT  
2 also failed to take all reasonable steps to prevent such harassment from occurring.

3 61. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
4 Plaintiff has suffered, and continues to suffer, general and special damages, including lost salary,  
5 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
6 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
7 trial.

8 62. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
9 has suffered, and continues to suffer, extreme anguish, humiliation, and emotional distress, the  
10 extent of which is not fully known at this time and the amount of damages not yet fully  
11 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

12 63. The conduct of MICROSOFT, its agents, and employees as described herein was  
13 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
14 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

15 64. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
16 Prayer for Relief below.

17 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

18 **THIRD CAUSE OF ACTION**  
19 **(Retaliation in Violation of FEHA)**  
20 **(Against MICROSOFT only)**

21 65. By this reference, Plaintiff hereby incorporates paragraphs 1 through 64, inclusive, of this  
22 Complaint as if set forth herein.

23 66. This Cause of Action is brought pursuant to California Government Code §§12900, *et*  
24 *seq.*, and the common law of the State of California which prohibits retaliation against  
25 employees for engaging in protected activity.

67. At all relevant times, MICROSOFT was, and is, an employer subject to suit under the  
California Fair Employment and Housing Act, Cal. Gov't Code § 12940, *et seq.* (hereinafter

1 "FEHA") and the common law of the State of California, in that it is a business with five or more  
2 employees doing business in the State of California.

3 68. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
4 and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One  
5 Complaint of Retaliation and the Right to Sue letter has been served on the Defendants and the  
6 other will be timely served. Accordingly, Plaintiff timely files this action.

6 69. MICROSOFT retaliated against Plaintiff by, but not limited to:

- 7 a. Subjecting Plaintiff to conduct that was harassing, blaming and intimidating;
- 8 b. Giving Plaintiff an undeserved, negative performance review;
- 9 c. Denying Plaintiff bonuses and other benefits to which she was entitled;
- 10 d. Failing to adequately and timely investigate and respond to Plaintiff's internal  
11 complaint of gender discrimination and/or to Plaintiff's DFEH complaint;
- 12 e. Failing to take temporary and/or permanent steps to address and remedy  
13 Plaintiff's work situation while MICROSOFT investigated the complaint of  
14 gender discrimination;
- 15 f. Failing to take appropriate corrective action to remedy the situation;
- 16 g. Failing to provide Plaintiff with a workplace free of discrimination, harassment  
17 and retaliation; and,
- 18 h. Constructively terminating Plaintiff from her position.

17 70. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged;  
18 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
19 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
20 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
21 trial.

21 71. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
22 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
23 extent of which is not fully known at this time, and the amount of damages not yet fully  
24 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.



1 72. The conduct of MICROSOFT, its agents, and employees as described herein was  
2 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
3 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

4 73. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
5 Prayer for Relief below.

6 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

7 **FOURTH CAUSE OF ACTION**  
8 **(Failure to Prevent and/or Remedy Discrimination and Harassment under FEHA)**  
9 **(Against MICROSOFT Only)**

10 74. By this reference, Plaintiff hereby incorporates paragraphs 1 through 73, inclusive, of this  
11 Complaint as if set forth herein.

12 75. This cause of action is brought pursuant to California Government Code §§ 12960, *et seq.*,  
13 and the common law of the State of California, which makes it an unlawful employment practice  
14 for an employer "*to fail to take all reasonable steps necessary to prevent discrimination and*  
15 *harassment from occurring.*"

16 76. At all times relevant hereto, MICROSOFT was a corporation, which employed 5 or more  
17 persons, engaged in an industry affecting commerce, bringing it within the provisions of  
18 California Government Code §§12900, *et seq.*, and the common law of the State of California,  
19 which places a duty on employers to prevent discrimination and harassment from occurring on  
20 the basis of gender.

21 77. Plaintiff timely filed two Complaints with the California Department of Fair Employment  
22 and Housing ("DFEH"). Plaintiff received a Plaintiff's "Right to Sue" from the DFEH. One  
23 Complaint of Discrimination and the Right to Sue letter have been served on the Defendants and  
24 the other will be timely served. Accordingly, Plaintiff timely files this action.

25 78. MICROSOFT owed a duty to Plaintiff to prevent discrimination and harassment from  
occurring against her in their employment relationship.

79. In September 2011, Plaintiff participated with several other female colleagues in the  
filing of an internal complaint of gender discrimination.

1 80. In November 2011 and February 7, 2012, Plaintiff timely filed Complaints with the  
2 California Department of Fair Employment and Housing ("DFEH") and received the "Right to  
3 Sue" from the DFEH. One Complaint of Discrimination and the Right to Sue letter have been  
4 served on MICROSOFT and the other will be timely served on MICROSOFT.

5 81. MICROSOFT knows, or should know, that Plaintiff was being harassed, retaliated  
6 against and discriminated against on the basis of her gender, female, in the terms and conditions  
7 of her employment.

8 82. MICROSOFT failed, and continues to fail, to take prompt action to correct the  
9 discriminatory and harassing work environment.

10 83. MICROSOFT failed to take all reasonable steps to expedite the investigation into  
11 Plaintiff's complaints. Despite Plaintiff being told that the investigation into the internal  
12 September 2011 complaint would be completed in two weeks, between September 2011 and  
13 January 2012 nothing was done to alter the situation.

14 84. In January 2012, despite acknowledging that Plaintiff was subjected to harassment and  
15 was treated in an unprofessional, rude and abrasive manner on a regular basis, Plaintiff was  
16 directed to return to the discriminatory and harassing work environment by Human Resources.

17 85. MICROSOFT breached its duty to Plaintiff by failing to take any steps to prevent the  
18 discrimination, harassment and retaliation from occurring.

19 86. MICROSOFT breached its duty to Plaintiff by failing to take prompt action to correct the  
20 discriminatory and harassing work environment, resulting in retaliation against Plaintiff.

21 87. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
22 Plaintiff has suffered and continues to suffer general and special damages, including lost salary,  
23 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
24 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
25 trial.

26 88. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
27 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress; the

1 extent of which is not fully known at this time and the amount of damages not yet fully  
2 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

3 89. The conduct of MICROSOFT, its agents, and employees as described herein was  
4 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
5 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

6 90. Plaintiff hereby also requests an injunction to enjoin MICROSOFT as specified in the  
7 Prayer for Relief below.

8 **WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth.**

9 **FIFTH CAUSE OF ACTION**  
10 **(For Breach of Contract)**  
11 **(Against MICROSOFT only)**

12 91. By this reference, Plaintiff hereby incorporates paragraphs 1 through 90, inclusive, of  
13 this Complaint as if set forth herein.

14 92. Plaintiff and Defendants entered into an employment agreement that was partly oral,  
15 partly written and partly implied-in-fact.

16 93. Plaintiff, at all times, has been, willing and able to perform all of the conditions of the  
17 agreement to be performed by her.

18 94. Defendant breached the employment agreement by, but not limited to:

- 19 a. Specifying the goals for Plaintiff's performance then evaluating her performance  
20 under different and unknown criteria;
- 21 b. The manner in which the performance reviews were conducted relative to the goals  
22 that were given to her and the manner in which the ratings were calibrated as to  
23 Plaintiff's performance compared to the performance of other employees;
- 24 c. Subjecting Plaintiff to abusive, demeaning behavior on a regular basis;
- 25 d. Failing to correct the abusive and demeaning situation when Plaintiff lodged her  
several complaints with Human Resources and with MICROSOFT's agents;
- e. Disregarding the obligations of supervisors at MICROSOFT in regards to diversity  
and performance standards;
- f. Treating Plaintiff differently in the terms and conditions of employment;

1 g. Failing, and refusing, to adhere to its own policies and practices in its treatment of  
2 Plaintiff; and,

3 h. Constructively terminating Plaintiff from her position.

4 95. As a direct and proximate result of Defendant's unlawful conduct as herein alleged,  
5 Plaintiff has suffered and continues to suffer substantial damages, including lost salary, benefits,  
6 bonuses and other employee benefits, in an amount in excess of the jurisdictional minimum of  
7 this Court, the precise amount to be proven at trial.

8 WHEREFORE, Plaintiff prays for judgment against Defendants as hereinafter set forth.

9 **SIXTH CAUSE OF ACTION**  
10 **(Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**  
11 **(Against MICROSOFT only)**

12 96. By this reference, Plaintiff hereby incorporates paragraphs 1 through 95, inclusive, of  
13 this Complaint as if set forth herein.

14 97. In every contract with employees in the State of California, there exists a covenant of  
15 good faith and fair dealing, requiring the employer not to take any action in bad faith to deny the  
16 employee compensation to which she is reasonably entitled.

17 98. As a result of the employment relationship which existed between Plaintiff and  
18 Defendants, the express and implied contracts made in connection therewith, the acts, conduct,  
19 promises and communications which resulted in said contract, and by operation of the law of the  
20 State of California, Defendants have covenanted and promised to act in good faith towards and  
21 deal fairly with Plaintiff.

22 99. Defendants have breached the covenant of good faith and fair dealing, by their conduct  
23 including, but not limited to, the following:

- 24 a. Arbitrarily and capriciously ranking Plaintiff's performance lower than other  
25 similarly situated males despite Plaintiff having achieved higher results than the  
26 other similarly situated males;
- 27 b. By adopting and implementing a subjective formula for evaluating, ranking and  
28 downgrading the performance of employees who meet and/or exceed the goals  
29 assigned to them by management; and,

1 c. Failing and refusing to treat Plaintiff fairly and in good faith.

2 100. Defendants' breach of the covenant of good faith and fair dealing was a substantial  
3 factor in causing damage and injury to the Plaintiff. As a direct and proximate result of  
4 Defendants' unlawful conduct as herein alleged, Plaintiff has suffered and continues to suffer  
5 substantial damages, including lost salary, benefits, bonuses and other employee benefits, in an  
6 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
7 trial.

8 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth:

9 **SEVENTH CAUSE OF ACTION**  
10 **(Constructive Discharge in Violation of Public Policy)**  
11 **(Against MICROSOFT Only)**

12 101. By this reference, Plaintiff hereby incorporates paragraphs 1 through 100, inclusive, of  
13 this Complaint as if set forth herein.

14 102. Plaintiff was employed by MICROSOFT as West Region Business Manager.

15 103. The fundamental, substantial, and well grounded public policy of the State of California  
16 as expressed in the Fair Employment and Housing Act, California Government Code §§ 12920,  
17 12921, 12926, 12940, prohibits discrimination and harassment in employment on the basis of  
18 gender, and prohibits retaliation against an employee for engaging in protected activity.

19 104. Plaintiff was subjected to working conditions that violated public policy, in that  
20 Plaintiff was treated intolerably due to harassment and discrimination based on her gender, and  
21 retaliated against for filing internal and external complaints of discrimination and harassment.

22 105. MICROSOFT intentionally created or knowingly permitted these working conditions.

23 106. These working conditions were so intolerable that a reasonable person in Plaintiff's  
24 position would have had no reasonable alternative except to deem the employer's conduct a  
25 constructive discharge of her employment.

107. Because of the employer's actions, and its failure to act, Plaintiff was constructively  
terminated from her position of West Region Business Manager.

108. As a direct and proximate result of MICROSOFT's unlawful conduct as herein alleged,  
Plaintiff has suffered and continues to suffer general and special damages, including lost salary,

1 benefits, bonuses, other employee benefits, lost career opportunities and loss of reputation, in an  
2 amount in excess of the jurisdictional minimum of this Court, the precise amount to be proven at  
3 trial.

4 109. As a further, direct and proximate result of MICROSOFT's unlawful conduct, Plaintiff  
5 has suffered and continues to suffer extreme anguish, humiliation, and emotional distress, the  
6 extent of which is not fully known at this time and the amount of damages not yet fully  
7 ascertained but in excess of the jurisdiction of this Court, the precise amount to be proven at trial.

8 110. The conduct of MICROSOFT, its agents, and employees as described herein was  
9 oppressive, fraudulent, and malicious, thereby entitling Plaintiff to an award of punitive damages  
10 against MICROSOFT in an amount appropriate to punish and make an example of Defendants.

11 **WHEREFORE**, Plaintiff prays for judgment against Defendants as hereinafter set forth.

12 **INJUNCTIVE RELIEF**

13 111. Plaintiff has suffered irreparable injury and immediate harm due to Defendants' acts.  
14 Plaintiff has no adequate legal remedy. In addition to the other relief requested in this Complaint,  
15 Plaintiff seeks injunctive relief enjoining Defendants from failing to prevent, remedy and correct  
16 the discrimination, harassment and retaliation of female employees at MICROSOFT. Plaintiff  
17 further requests injunctive relief requiring that Defendants advise employees of all goals by  
18 which their performance will be measured at the time their performance reviews are conducted.  
19 Money damages will not fully compensate Plaintiff for the harm she has suffered.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff S. ZODY prays for judgment against Defendants, and  
22 MICROSOFT in particular, as follows:

23 1. For a judgment awarding compensatory damages including lost compensation and lost  
24 benefits in excess of the jurisdictional minimum of this Court and according to proof pursuant to  
25 Plaintiff's First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action according to  
proof at trial;

2. For a judgment awarding damages for emotional distress pursuant to Plaintiff's First,  
Second, Third, Fourth and Seventh Causes of Action according to proof at trial;



1 3. For a judgment awarding punitive damages pursuant to Plaintiff's First, Second, Third,  
2 Fourth and Seventh Causes of Action according to proof at trial;

3 4. For a judgment awarding attorneys' fees and costs under California Government Code  
4 §12965, under Plaintiff's First, Second, Third and Fourth Causes of Action and Plaintiff's  
Request for Injunctive Relief;

5 5. For a judgment awarding attorney's fees and costs under California Code of Civil  
6 Procedure §1021.5 for enforcement of an important right affecting the public interest pursuant to  
7 Plaintiff's Seventh Cause of Action;

8 6. For prejudgment interest pursuant to California Civil Code §§ 3287, 3288 and 3291 on all  
9 amounts claimed pursuant to all causes of action;

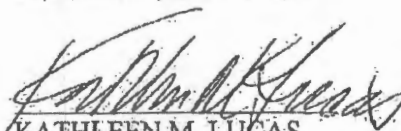
10 7. For injunctive relief enjoining Defendants from failing to prevent, remedy and correct the  
11 discrimination, harassment and retaliation, and from continuing to discriminate against and  
harass Plaintiff pursuant to Plaintiff's First, Second, Third, and Fourth Causes of Action;

12 8. For injunctive relief requiring that Defendants advise employees of all goals by which  
13 their performance will be measured at the time their performance reviews are conducted; and,

14 9. For such other and further relief as the Court shall deem just and proper.

15 Date: February 8, 2012.

THE LUCAS LAW FIRM

16  
17   
18 KATHLEEN M. LUCAS  
19 SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY



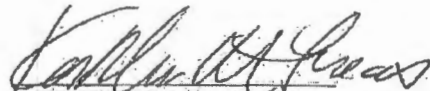
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY**

As to all claims allowing for trial by jury, Plaintiff hereby demands a trial by jury.

Date: February 8, 2012

THE LUCAS-LAW FIRM

  
KATHLEEN M. LUCAS  
SHAWNA B. CASEBIER  
Attorneys for Plaintiff  
S. ZODY

**EXHIBIT C**

**Superior Court of California, County of San Francisco**

Case Number: CGC-12-517288

Title: S ZODY VS. MICROSOFT CORPORATION et al

Cause of Action: OTHER NON EXEMPT COMPLAINTS

Generated: Feb-24-2012 10:11 am PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#)  
[Documents](#)

**Register of Actions**

Date Range: First Date Jan-13-2012 Last Date Feb-24-2012 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence ALL FILING TYPES

[Submit](#)

Date	Proceedings	Document	Fee
FEB-08-2012	1ST AMENDED COMPLAINT FILED BY PLAINTIFF ZODY, S AS TO DEFENDANT MICROSOFT CORPORATION DOES 1 TO 25, INCLUSIVE		
JAN-27-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF ZODY, S SERVED JAN-25-2012, PERSONAL SERVICE ON DEFENDANT MICROSOFT CORPORATION	<a href="#">View</a>	
JAN-13-2012	NOTICE OF RELATED CASE: CGC-12-517202 FILED BY PLAINTIFF ZODY, S		
JAN-13-2012	NOTICE TO PLAINTIFF	<a href="#">View</a>	
JAN-13-2012	OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF ZODY, S AS TO DEFENDANT MICROSOFT CORPORATION DOES 1 TO 25, INCLUSIVE SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR JUN-15-2012 PROOF OF SERVICE DUE ON MAR-13-2012 CASE MANAGEMENT STATEMENT DUE ON MAY-31-2012	<a href="#">View</a>	410.00