

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EOLAS TECHNOLOGIES	§	
INCORPORATED,	§	
	§	
PLAINTIFF,	§	Civil Action No. 6:09-CV-446-LED
	§	
v.	§	
	§	
ADOBE SYSTEMS INC., et al.,	§	JURY TRIAL DEMANDED
	§	
DEFENDANTS.	§	
	§	

DEFENDANTS' IDENTIFICATION OF ISSUES TO BE TRIED BY THE COURT

Pursuant to the Court's Order Amending Pretrial Deadlines (D.N. 1140), Defendants identify the following issues to be tried to the bench in this case:

1. **Licensing/Exhaustion; Scope Of Conduct Licensed By Eolas-Microsoft, Eolas-Apple, And Eolas-Oracle Licensing Agreements [EXCEPTING Defenses Of Third-Party Beneficiaries: CDW, J.C. Penney, Go Daddy]¹**
2. **Willful Infringement**
3. **Laches**
4. **Equitable Estoppel**
5. **Injunctive Or Other Equitable Relief, If Appropriate**
6. **Enhanced Damages, If Appropriate**
7. **Attorneys' Fees And Costs, If Appropriate**
8. **Prejudgment Interest, If Appropriate**

¹ These defendants have filed motions for summary judgment with respect to their license defenses based upon the absence of any disputed factual issues which would preclude judgment in their favor on this defense. However, should the Court deny the motions of these defendants, these defendants believe that the jury must resolve the issue of their defense that Eolas' suit is a breach of the Microsoft License Agreement to which they are acknowledged beneficiaries.

Respectfully submitted,

Dated: January 5, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 5, 2012.

/s/ Michael E. Jones