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Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY,

Plaintiff,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

NO. C07-0475 MJP

CLASS ACTION

DECLARATION OF JEFFREY M.
THOMAS IN SUPPORT PLAINTIFF'S
OPPOSITION TO MOTION TO
DISMISS

JEFFREY M. THOMAS declares as follows:

1. I am one of the attorneys for the Plaintiff in this matter. I make this declaration based upon my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the Microsoft Windows Home Edition (Retail) End-User License Agreement for Microsoft Software, as obtained from Microsoft's web site.

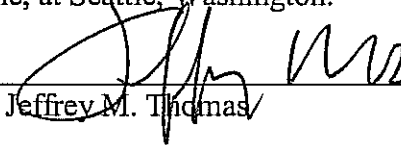
3. Attached hereto as Exhibit B is a true and correct copy of the Findings of Fact in the Consolidation Proceedings, United States of America v. Microsoft Corporation and State of New York v. Microsoft Corporation, United States District Court for the District of Columbia

DECLARATION OF JEFFREY M. THOMAS- 1
(No. CV07-0475 MJP)

GORDON TILDEN THOMAS & CORDELL LLP
1325 Fourth Avenue, Suite 1800
Seattle, WA 98101-2510
Phone (206) 467-6477
Fax (206) 467-6292

1 I declare under penalty of perjury under the laws of the United States of America that the
2
3 foregoing is true and correct.
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5 Executed this 18th day of June, at Seattle, Washington.
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9 _____
10 Jeffrey M. Thomas
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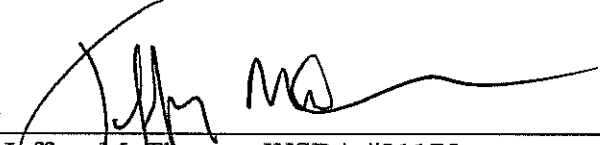
CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following.

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EXHIBIT A

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Windows XP Home Edition

MICROSOFT WINDOWS XP HOME EDITION (RETAIL) END-USER LICENSE AGREEMENT FOR MICROSOFT SOFTWARE

Published: June 1, 2004

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maximum includes any indirect connections made through "multiplexing" or other software or hardware which pools or aggregates connections. This five connection maximum does not apply to any other uses of the Software.

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Exhibit A Page 9

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EXHIBIT B

icons and words on the screen using a mouse. Although originally just a user-interface, or "shell," sitting on top of MS-DOS, Windows took on more operating-system functionality over time.

8. In 1995, Microsoft introduced a software package called Windows 95, which announced itself as the first operating system for Intel-compatible PCs that exhibited the same sort of integrated features as the Mac OS running PCs manufactured by Apple Computer, Inc. ("Apple"). Windows 95 enjoyed unprecedented popularity with consumers, and in June 1998, Microsoft released its successor, Windows 98.

9. Microsoft is the leading supplier of operating systems for PCs. The company transacts business in all fifty of the United States and in most countries around the world.

10. Microsoft licenses copies of its software programs directly to consumers. The largest part of its MS-DOS and Windows sales, however, consists of licensing the products to manufacturers of PCs (known as "original equipment manufacturers" or "OEMs"), such as the IBM PC Company and the Compaq Computer Corporation ("Compaq"). An OEM typically installs a copy of Windows onto one of its PCs before selling the package to a consumer under a single price.

11. The Internet is a global electronic network, consisting of smaller, interconnected networks, which allows millions of computers to exchange information over telephone wires, dedicated data cables, and wireless links. The Internet links PCs by means of servers, which run specialized operating systems and applications designed for servicing a network environment.

12. The World Wide Web ("the Web") is a massive collection of digital information resources stored on servers throughout the Internet. These resources are typically provided in the

toward Netscape, IBM, Compaq, Intel, and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do not coincide with Microsoft's self-interest.

_____/s/_____
Thomas Penfield Jackson
U.S. District Judge

Date: November 5, 1999