

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY,

Plaintiff,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

No. CV07-00475 MJP

STIPULATION AND
[PROPOSED] ORDER
GRANTING LEAVE TO FILE
AMENDED COMPLAINT
SUBJECT TO CONDITIONS

STIPULATION

Plaintiff Dianne L. Kelley and defendant Microsoft Corporation, through their undersigned counsel, stipulate and agree as follows:

On March 29, 2007, Ms. Kelley filed a Complaint against Microsoft, seeking recovery under the Washington Consumer Protection Act and alleging unjust enrichment. On May 8, 2007, before Microsoft filed a responsive pleading, Ms. Kelley filed an Amended Complaint, asserting additional causes of action under the Magnuson-Moss Warranty Act and for breach of contract. On May 25, 2007, Microsoft filed a motion to dismiss the Amended Complaint in its entirety, and the parties completed briefing on Microsoft's motion to dismiss on June 22, 2007.

Ms. Kelley has now asked Microsoft to stipulate to the filing of a Second Amended Complaint, which would add Kenneth Hansen as an additional named plaintiff but would not

1 otherwise add to or elaborate on the substantive allegations of Ms. Kelley's Amended
2 Complaint. Subject to the Court's approval, the parties stipulate and agree as follows:

3 1. The proposed Second Amended Complaint attached hereto as Exhibit A should
4 be allowed;

5 2. Microsoft's pending motion to dismiss shall be deemed directed to the Second
6 Amended Complaint, as the Second Amended Complaint does not modify the substantive
7 allegations set forth in the Amended Complaint; and

8 3. The discovery that Microsoft served on Ms. Kelley on Friday, July 6, 2007,
9 shall be deemed to have been served on the new plaintiff, Kenneth Hansen, although Mr.
10 Hansen may respond to these discovery requests on or before August 13, 2007.

11 DATED this 12th day of July, 2007.

12 Davis Wright Tremaine LLP
13 Attorneys for Defendant
14 Microsoft Corporation

15 By /s/ Stephen M. Rummage

16 Stephen M. Rummage, WSBA #11168
17 Cassandra Kinkead, WSBA #22845
18 Charles S. Wright, WSBA #31940
19 Suite 2200
20 1201 Third Avenue
21 Seattle, WA 98101-3045
22 Telephone: (206) 757-8136
23 Fax: (206) 757-7136
24 E-mail: steverummage@dwt.com
25 E-mail: cassikinkead@dwt.com
26 E-mail: charleswright@dwt.com

27 Charles B. Casper
Montgomery, McCracken, Walker &
Rhoads, LLP
123 South Broad St.
Philadelphia, PA 19109-1029
Telephone: (215) 772-7223
Fax: (215) 731-3750
E-mail: ccasper@mmwr.com

1 DATED this 12th day of July, 2007.

2 GORDON TILDEN THOMAS &
3 CORDELL LLP
Attorneys for Plaintiff Dianne L. Kelley

4 By /s/ Jeffrey M. Thomas
5 Jeffrey I. Tilden, WSBA #12219
6 Jeffrey M. Thomas, WSBA #21175
7 Michael Rosenberger, WSBA #17730
8 Mark A. Wilner, WSBA #31550
9 1001 Fourth Avenue, Suite 4000
10 Seattle, WA 98154-1007
11 Telephone: (206) 467-6477
12 Fax: (206) 467-6292
13 Email: jtilden@gmtlaw.com
14 Email: jthomas@gmtlaw.com
15 Email: mrosenberger@gmtlaw.com
16 Email: mwilner@gmtlaw.com

17 **ORDER**

18 IT IS HEREBY ORDERED AS FOLLOWS:

19 1. Plaintiff Dianne Kelley is hereby granted leave to file her Second Amended
20 Complaint in the form attached hereto as Exhibit A.

21 2. Microsoft's pending motion to dismiss shall be deemed directed to the Second
22 Amended Complaint and, thus, the ruling from the Court shall be effective as to the Second
23 Amended Complaint.

24 3. The discovery that Microsoft served on Ms. Kelley on Friday, July 6, 2007,
25 shall be deemed to have been served on the new plaintiff, Kenneth Hansen, although Mr.
26 Hansen may respond to these discovery requests on or before August 13, 2007.

27 DATED this ___ day of July, 2007.

MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2007, I electronically filed the foregoing Stipulation and [Proposed] Order Granting Leave to File Amended Complaint Subject to Conditions with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey I. Tilden:	<u>jtilden@gordontilden.com</u>
Jeffrey M. Thomas:	<u>jthomas@gordontilden.com</u>
Michael Rosenberger:	<u>mrosenberger@gordontilden.com</u>
Mark A. Wilner:	<u>mwilner@gordontilden.com</u>
William C. Smart:	<u>wsmart@kellerrohrback@dwt.com</u>
Mark A. Griffin:	<u>mgriffin@kellerrohrback@dwt.com</u>
Ian S. Birk:	<u>ibirk@kellerrohrback@dwt.com</u>

DATED this 12th day of July, 2007.

Davis Wright Tremaine LLP
Attorneys for Defendant
Microsoft Corporation

By /s/ Stephen M. Rummage
Stephen M. Rummage, WSBA #11168
Davis Wright Tremaine LLP
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
Telephone: (206) 757-8136
Fax: (206) 757-7136
E-mail: steverummage@dwt.com

Exhibit A

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Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

NO. C07-0475 MJP

SECOND AMENDED
COMPLAINT

CLASS ACTION

JURY DEMAND

I. INTRODUCTION

1.1 Overview. Dianne L. Kelley and Kenneth Hansen, individually and on behalf of a class of persons and/or entities similarly situated, brings this action for rescission, damages, and such other relief as may be available against defendant Microsoft Corporation pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., common law, and the Washington Consumer Protection Act, Ch. 19.86 RCW, or, alternatively, the consumer protection acts of the various states. Plaintiffs demand a trial by jury for all claims for which they have a legal right.

1.2 Summary of Claims. This consumer class action arises from Microsoft's breach of its warranty obligations, breach of contract, and deceptive and unfair conduct in marketing

1 and selling its new operating system, which it calls "Vista." In early 2006, nearly a year before
2
3 Microsoft released Vista, Microsoft began employing marketing measures designed to avoid a
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5 drop in sales of personal computers ("PCs") incorporating Microsoft's then-existing Windows
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7 XP operating system. Microsoft feared that consumers would delay PC purchases until
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9 Microsoft released Vista. Microsoft thus authorized original equipment manufacturers
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11 ("OEMs") to place a sticker on PCs indicating that the PCs had been certified by Microsoft as
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13 "Windows Vista Capable," meaning that the consumer could upgrade the PC to run the new
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15 Vista operating system when it was released. In fact, a large number of these PCs can only run
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17 "Vista Home Basic" ("Vista Basic"). Vista Basic has been described by one reviewer as "the
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19 most pointless edition of Windows that Microsoft has ever released." PCs certified as Windows
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21 Vista Capable, but which are only able to run Vista Basic, are incapable of running virtually any
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23 of Vista's heavily promoted and most popular unique features. The enhanced graphics, media
24
25 center and remote control that have been marketed and advertised by Microsoft as "Vista" are
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27 available on every version of Vista except Vista Basic. Moreover, many of the most prominent
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29 "features" that do exist on Vista Basic, such as Windows Defender and Internet Explorer 7, are
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31 freely available for use on Windows XP. Simply put, Vista Basic is incapable of running any of
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33 the features that are unique to Vista and which make Vista attractive to consumers. Later,
34
35 beginning in October 2006, Microsoft embarked on its "Express Upgrade" promotion, under
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37 which purchasers of PCs that Microsoft certified as "Windows Vista Capable" were guaranteed a
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39 free or reduced-price upgrade to "Vista" when it became available. In fact, the version of Vista
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41 made available to many of these purchasers is Vista Basic, and thus is lacking features that
42
43 Microsoft has touted in Vista as radical improvements over previous operating systems. In sum,
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1 Microsoft engaged in bait and switch—assuring consumers they were purchasing “Vista
2 Capable” PCs when, in fact, they could obtain only, or were provided with, a stripped-down
3 operating system lacking the functionality and features that Microsoft touted as “Vista.”
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7 **II. PARTIES**
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9 2.1 Plaintiff Kelley. Dianne L. Kelley is a resident of the State of Washington. In
10 November 2006, she purchased a PC to which a “Windows Vista Capable” sticker is affixed.
11 The PC she purchased was not designated as “Premium Ready.”
12

13 2.2 Plaintiff Hansen. Kenneth Hansen is a resident of the State of Illinois. In
14 December 2006, he purchased a PC to which a “Windows Vista Capable” sticker is affixed. The
15 PC he purchased was not designated as “Premium Ready.”
16

17 2.3 Defendant. Microsoft Corporation is the world’s largest seller of operating
18 systems for PCs. It is a Washington corporation with its international headquarters located in
19 Redmond, Washington.
20

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22 **III. JURISDICTION AND VENUE**
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24 3.1 Subject Matter Jurisdiction. Plaintiff in this matter seeks certification of a
25 nationwide class, and the amount in controversy exceeds \$5,000,000. This Court has jurisdiction
26 under 28 U.S.C. § 1332(d)(2).
27

28 3.2 Personal Jurisdiction. Microsoft does substantial and continuous business in this
29 state and thus is subject to general jurisdiction.
30

31 3.3 Venue. Venue in this district is proper under 28 U.S.C. § 1391(a) because
32 defendant resides in this district.
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IV. FACTUAL ALLEGATIONS

4.1 Vista Operating Systems. Microsoft has publicly represented that it spent between \$5 billion and \$6 billion over five years to develop the next generation Windows operating system, which it named Windows Vista (hereafter, "Vista"). Prior to and after the date Vista became available to the public, Microsoft touted Vista as the most advanced operating system yet developed.

4.2 Delayed Vista Launch. In or around March 2006, Microsoft announced that it was delaying the launch of Vista until early 2007. As described in a March 22, 2006 article in the Seattle Post-Intelligencer, Microsoft's announcement was considered "a blow to the personal computer industry." As with many other retail products, substantial PC sales occur during the holiday season. Microsoft and OEMs feared that consumers looking to buy a new computer in 2006 would delay the purchase, knowing that in a few weeks or months PCs equipped with Microsoft's new Vista operating system would be publicly available. As reported in the Seattle P-I, "analysts said the lack of [Vista's] retail availability during the holiday shopping season is likely to remove the incentive for many consumers to buy new computers."

4.3 "Windows Vista Capable" Certification Stickers. Microsoft responded to the concern that PC sales would drop while consumers awaited the launch of Vista. First, Microsoft established specifications which, if satisfied, allowed OEMs to identify a PC as "Windows Vista Capable," and to confirm that designation by affixing a highly conspicuous, Microsoft designed and trademarked sticker on the computer. The Windows Vista Capable certification sticker was designed by Microsoft to reassure consumers that they would be buying a product that had been certified by Microsoft as upgradeable to Vista.

1 4.4 Microsoft Certifies PCs As “Vista Capable” That Won’t Run “The Real Vista”.
2

3 There are four editions of Vista: Basic, Premium, Business and Ultimate. Central to Microsoft’s
4 deceptive practices was its failure to indicate on its “Windows Vista Capable” stickers that a PC
5 certified as “Windows Vista Capable,” but lacking the designation “Premium Ready,” could run
6 only Vista Basic, which provides none of the features that are unique to Vista and make Vista
7 attractive to consumers. As stated by Jim Wong, Senior Vice President of Acer, a leading OEM,
8 “Premium is the real Vista.” Microsoft touted Vista’s unique features and capabilities, but then
9 certified PCs as “Windows Vista Capable” that were incapable of running these features and
10 capabilities.
11
12

13 4.5 Microsoft Markets Deceptive “Upgrade Guarantees” to the Drastically Inferior
14

15 Home Basic Version of Vista. In October 2006, Microsoft embarked on a supplemental
16 marketing strategy designed to further boost holiday sales of PCs bearing the soon-to-be-
17 replaced Windows XP operating system. Pursuant to Microsoft’s “Express Upgrade Guarantee
18 Program,” consumers purchasing “Windows Vista Capable” PCs would receive upgrades to
19 “Vista” for little or no cost. In fact, the upgrade for many of these customers is to Vista Basic,
20 which offers none of the new and unique features that Microsoft marketed as and calls “Vista.”
21 Consumers were falsely led to believe they would be upgraded to a version of a dramatically new
22 operating system bearing the unique features marketed by Microsoft as Vista. Defendant’s
23 “Express Upgrade” plan failed to apprise consumers that a purported upgrade to Vista was, for
24 them, to an operating system that Microsoft knew was “Vista” in name only.
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41 4.6 Microsoft Acknowledges that Vista Basic Does Not Provide the “Core Windows
42 Vista Experience.” In a Microsoft-sponsored and content-controlled blog, Nick White, a product
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1 manager on Microsoft's Vista launch team, discussed Microsoft's Express Upgrade program. In
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3 October 2006, Mr. White admitted that only PCs certified as "Premium Ready" are "designed to
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5 deliver the core Windows Vista experience." Microsoft failed to advise consumers buying PCs
6
7 certified as "Windows Vista Capable" that this "capability" did not include the "core Windows
8
9 Vista experience."

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11 4.7 Bill Gates Furthers the Deceptive Marketing. On January 29, 2007, Microsoft
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13 Chairman Bill Gates appeared on NBC's The Today Show. He stated that for "less than \$100"
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15 one could "upgrade" to "Vista." In fact, one can only "upgrade" to Vista Basic for that price,
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17 which Mr. Gates and Microsoft know is a product that lacks the features marketed by Microsoft
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19 as being new and unique to Vista. In doing so, Mr. Gates furthered Microsoft's unfair and
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21 deceptive conduct by reiterating the misleading implication that Vista Basic bears a meaningful
22
23 relationship to the new operating system that Microsoft spent more than \$5 billion over five
24
25 years to develop, and that it can deliver the "core Windows Vista experience."

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27 4.8 Microsoft Now Publicly Acknowledges Vista Basic's Inadequacy. In the
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29 April/May 2007 edition of Windows Vista Magazine—a publication authorized, endorsed, and
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31 promoted by Microsoft—Microsoft concedes that Vista Basic is for "those who only want to do
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33 the bare minimum with their PCs." Vista Basic is not, according to the magazine, for "games" or
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35 "movie, photo and music enjoyment."

36
37 4.9 Microsoft is Subject to FTC Order Prohibiting Similar Conduct. Since May 15,
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39 2001, Microsoft has been subject to an order of the United States Federal Trade Commission in
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41 Docket No. C-4010 ("FTC Order"), which prohibits Microsoft from engaging in conduct that is
42
43 substantially similar to that in which it engaged through its Windows Vista Capable program.
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1 Specifically, under the FTC Order, Microsoft is required to “clearly and conspicuously” make all
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3 necessary limitation disclosures in any of its advertising materials that promote the capabilities
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5 of another company’s hardware device that utilizes a Microsoft-licensed operating system. For
6
7 example:

8
9 On a product label, the disclosure shall be in a type size and location on the same
10 display panel as the triggering representation sufficiently noticeable for an
11 ordinary consumer to read and comprehend it, in print that contrasts with the
12 background against which it appears.

13
14 Microsoft’s Windows Vista Capable program fails to adhere to the FTC Order.

15
16 **V. CLASS ACTION ALLEGATIONS**

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18 5.1 The Class. Plaintiffs bring this suit as a class action on behalf of themselves and
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20 all other United States residents similarly situated as members of a proposed plaintiff class
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22 (“Class”) pursuant to Fed. R. Civ. P. 23(b)(3). The Class is defined as follows:

23
24 All persons and entities residing in the United States who
25 purchased a personal computer certified by Microsoft as
26 “Windows Vista Capable” and not also bearing the “Premium
27 Ready” designation, and/or all persons and entities residing in the
28 United States who purchased a PC with an “Express Upgrade” to
29 Vista Basic.

30
31 Excluded from this class are: (a) Defendant, any entity in which
32 defendant has a controlling interest or which has a controlling
33 interest in defendant; (b) Defendant’s, employees, agents,
34 predecessors, successors or assigns; and (c) the judge and staff to
35 whom this case is assigned, and any member of the judge’s
36 immediate family.

37
38 5.2 Numerosity. The Class is so numerous that individual joinder is impracticable.
39
40 The precise numbers of Class members is unknown, but upon information and belief, exceeds
41
42 10,000 members.

1 5.3 Typicality. Plaintiffs' claims are typical of those of the Class members because
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3 plaintiffs each purchased a "Windows Vista Capable" PC in 2006 which require a further
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5 expenditure of money on their part, above any cost of a Vista Basic upgrade, in order to utilize
6
7 the features that Microsoft's own representative has identified as the "core Vista experience" and
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9 others have described as "the real Vista." Like all members of the proposed Class, plaintiffs
10
11 were damaged by Microsoft's breach of its warranty and contract obligations, and its unfair and
12
13 deceptive trade practices related to its Windows Vista Capable and/or Express Upgrade
14
15 programs, through which Microsoft passed off Vista Basic as a meaningful version of its new
16
17 Vista operating system.

18
19 5.4 Named Class Members Identifiable. Class members can be identified, upon
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21 information and belief, through defendant's licenses issued in the relevant period and/or
22
23 information in defendant's possession or control concerning the units sold by OEMs that are
24
25 "Windows Vista Capable."
26

27 5.5 Common Questions Predominate. Common questions of law and fact
28
29 predominate over any questions affecting only individual Class members. Some of the common
30
31 legal and factual questions include:
32

- 33 a. Whether Microsoft's written designation of PCs pre-installed with
34 its Windows XP operating system as "Windows Vista Capable"
35 constituted a "written warranty" within the meaning of the
36 Magnuson-Moss Warranty Act.
37
38 b. Whether Microsoft committed breach of contract;
39
40 c. Whether Vista Basic fails to provide consumers with the new and
41 unique features promoted by Microsoft as being "Vista."
42
43 d. Whether Class members are required to make a further expenditure
44 of money, above any cost of a Vista Basic upgrade, in order to
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utilize the features that Microsoft’s own representative has identified as the “core Vista experience” and others have described as “the real Vista.”

- e. Whether Microsoft’s certification of PCs as being “Windows Vista Capable” was false, unfair and/or deceptive when, in fact, running Vista Basic they could not perform Vista’s new, unique and most touted functions.
- f. Whether Microsoft deceived consumers by passing off Vista Basic as a meaningful version of its new Vista operating system.
- g. Whether the Express Upgrade promotion was false, unfair and/or deceptive in implying that consumers who were guaranteed upgrades to Vista would receive a free or reduced-price upgrade to a version of Vista containing the features touted by Microsoft as being “Vista.”
- h. Whether Microsoft violated the Magnuson-Moss Warranty Act.
- i. Whether Microsoft violated the Consumer Protection Act of the State of Washington or, alternatively, the consumer protection statutes of the various states.
- j. Whether Microsoft has been unjustly enriched by purchases of licenses by Class members who purchased PCs running Windows XP and were guaranteed free or reduced-price upgrades to Vista as part of Microsoft’s Express Upgrade program, but must now buy Vista Premium to obtain the “core Windows Vista experience.”

5.7 Plaintiffs Adequately Represent the Class. Plaintiffs will fairly and adequately represent all members of the Class because their interests are not adverse to those of the Class and they suffered injury similar to that suffered by the Class they seek to represent—injury stemming from a common practice on the part of Microsoft that constituted a breach of its warranty and contract obligations and was equally unfair and equally deceptive to all members of the Class. To this end, plaintiffs have retained experienced counsel who are competent in class action litigation. The interests of the Class will be fairly and adequately protected by plaintiffs

1 and their counsel. Neither plaintiffs nor undersigned counsel has any interest that may inhibit or
2 obstruct the vigorous pursuit of this action.
3
4

5 5.8 Class Form Superior to All Other. This class action is superior to other available
6 means for the fair and efficient resolution of the claims of plaintiffs and the proposed Class
7 members. The relief sought per individual member of the Class is small and the burden and
8 expense of prosecuting claims against Microsoft would make it virtually impossible for the Class
9 members to seek redress on an individual basis.
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14 5.9 Individual Prosecution Unlikely and Unreasonable. Plaintiffs and their counsel
15 are not aware of any interest that members of the Class would have in individually controlling
16 the prosecution of separate actions, especially given the relatively small size of each individual
17 claim, and the cost, expense and difficulty of litigating against one of the largest corporations in
18 the United States. Plaintiffs and their counsel are also not aware of any actions already
19 commenced on behalf of members of the Class alleging similar claims or seeking similar relief.
20 Given the similar nature of class members' claims and the absence of material differences in the
21 state statutes and common law doctrine upon which the Class members' claims are based (should
22 Washington and federal law not solely apply), a nationwide Class could be managed by this
23 Court. A significant economy of scale exists in concentrating the litigation in this forum.
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35 **VI. FIRST CAUSE OF ACTION: VIOLATION OF MAGNUSON-MOSS**
36 **WARRANTY ACT**
37

38 6.1 Incorporation. Plaintiffs re-allege and incorporate herein the allegations
39 contained above.
40

41 6.2 Subject Transactions. Plaintiffs and the proposed members of the Class
42 purchased a computer certified by Microsoft as "Windows Vista Capable," but are required to
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1 make a further expenditure of money, above any cost of a Vista Basic upgrade, in order to utilize
2
3 the features that Microsoft's own representative has identified as the "core Vista experience" and
4
5 others have described as "the real Vista." Microsoft's "Windows Vista Capable" certification
6
7 constitutes a deceptive warranty in violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §
8
9 2301, et seq.

10
11 6.3 "Consumer Products." The operating systems purchased by members of the Class
12
13 are "consumer products" within the meaning of the Magnuson-Moss Warranty Act.

14
15 6.4 "Consumers." Members of the Class are "consumers" within the meaning of the
16
17 Magnuson-Moss Warranty Act.

18
19 6.5 "Supplier" and "Warrantor." Microsoft is a "supplier" and a "warrantor" within
20
21 the meaning of the Magnuson-Moss Warranty Act.

22
23 6.6 "Written Warranty." Microsoft's written certification on PCs pre-installed with
24
25 its Windows XP operating system as "Windows Vista Capable" constituted a "written warranty"
26
27 within the meaning of the Magnuson-Moss Warranty Act.

28
29 6.7 Breach of Statutory Duties. Microsoft's practices, as described herein, violate the
30
31 Magnuson-Moss Warranty Act by, among other things, failing to provide a written warranty free
32
33 of deception to a reasonable, typical consumer.

34
35 6.8 Remedies. Microsoft's violations of the Magnuson-Moss Warranty Act entitle
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37 plaintiffs and the members of the Class to an award of legal and equitable relief, including actual
38
39 damages, rescission, attorneys' fees, and costs of suit.

40
41 6.9 Satisfaction of Conditions Precedent. All conditions precedent to the
42
43 maintenance of a class action claim under the Magnuson-Moss Warranty Act have been satisfied.
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1 **VII. SECOND CAUSE OF ACTION: BREACH OF CONTRACT**
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3 7.1 Incorporation. Plaintiffs re-allege and incorporate herein the allegations
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5 contained above.

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7 7.2 Breach of Contract. Microsoft contractually promised to provide plaintiffs, and
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9 all members of the proposed Class, software and services, or additional software and services,
10 that provided "Vista" at a price not exceeding any cost of an upgrade to Vista Basic. Microsoft
11 breached its promise by providing plaintiffs, and all members of the proposed Class, with the
12 limited capability, absent a further expenditure of money, to run only Vista Basic, but not what
13 Microsoft's own representative has identified as the "core Vista experience" and others have
14 described as "the real Vista."
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21 7.3 Damages. Plaintiffs, and all members of the proposed Class, have been damaged
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23 by Microsoft's failure to provide software and services as herein alleged.
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25 7.4 Remedies. Microsoft's breach of contract entitles plaintiffs and all members of
26
27 the proposed Class to an award of legal and equitable relief, including actual damages,
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29 rescission, reformation, and specific performance.
30

31 **VIII. THIRD CAUSE OF ACTION: VIOLATION OF STATE CONSUMER**
32 **PROTECTION ACT**

33
34 8.1 Incorporation. The preceding paragraphs are re-alleged and incorporated herein.
35

36 8.2 Subject Transactions. Plaintiffs and the proposed members of the Class
37
38 purchased PCs certified by Microsoft as "Windows Vista Capable" without the additional
39 designation "Premium Ready." Class members also may have purchased PCs and their
40 purchase price included an "Express Upgrade" to "Vista," but in fact the "upgrade" was only to
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1 Vista Basic. In both cases, Microsoft engaged in the same pattern of unfair and deceptive
2
3 conduct pursuant to a common policy.
4

5 8.3 Breach of Statutory Duty. Defendant had a statutory duty to refrain from unfair
6
7 or deceptive acts or practices in marketing Vista in the months prior to launch, including
8
9 instructing and then authorizing OEMs to affix to PCs a Microsoft designed and trademarked
10 certification that the PCs were "Windows Vista Capable." Defendant also violated this duty
11 through its Express Upgrade program. In both situations, Microsoft failed to advise Class
12 members that they would be required to make a further expenditure of money, above any cost of
13 a Vista Basic upgrade, in order to utilize the features that Microsoft's own representative has
14 identified as the "core Vista experience" and others have described as "the real Vista."
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21 8.4 Unfair and Deceptive Acts. Defendant's material omissions were and are unfair
22 and deceptive acts or practices in trade and commerce which affect the public interest.
23
24

25 8.5 Damage. Plaintiffs and Class members were directly and proximately injured by
26 Microsoft's conduct, including but not limited to having to purchase RAM and/or other hardware
27 in order to run "the real Vista," and by requiring consumers receiving Vista Basic through the
28 Express Upgrade program to pay additional money to obtain "the real Vista." Plaintiffs and the
29 members of the proposed Class also were injured by defendant's unfair or deceptive acts or
30 practices which created artificial demand for PCs at an artificially inflated price. Plaintiffs and
31 the proposed Class paid the artificially inflated price, thus incurring economic loss. Plaintiffs
32 and proposed Class members are entitled to damages, restitution, disgorgement and/or such
33 orders or judgment as may be necessary to restore to any person in interest, any money which
34 may have been acquired by means of unfair practices.
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1 8.6 Violation of the Washington CPA. Defendant's actions, as complained of herein,
2
3 constitute unfair competition or unfair, deceptive or fraudulent acts or practices in violation of
4
5 Wash. Rev. Code § 19.86.010, *et seq.*
6

7 8.7 Alternatively, Defendant's actions constitute unfair competition or unfair,
8
9 deceptive or fraudulent acts or practices in violation of the consumer protection statutes of every
10
11 state:
12

- 13 a. Defendant has engaged in unfair or deceptive acts or practices in violation
14
15 of Ala. Code § 8-19-1, *et seq.*;
16
17 b. Defendant has engaged in unfair or deceptive acts or practices in violation
18
19 of Alaska Stat. Code § 40.50.471, *et seq.*;
20
21 c. Defendant has engaged in unfair or deceptive acts or practices in violation
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23 of Ariz. Rev. Stat. § 44-1522, *et seq.*;
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25 d. Defendant has engaged in unfair or deceptive acts or practices in violation
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27 of Ark. Code § 4-88-101, *et seq.*;
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29 e. Defendant has engaged in unfair or deceptive acts or practices in violation
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31 of Colo. Rev. Stat. § 6-1-105, *et seq.*;
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33 f. Defendant has engaged in unfair or deceptive acts or practices in violation
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35 of Conn. Gen. Stat. § 42-110b, *et seq.*;
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37 g. Defendant has engaged in unfair or deceptive acts or practices in violation
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39 of 6 Del. Code § 2511, *et seq.*;
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41 h. Defendant has engaged in unfair or deceptive acts or practices in violation
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43 of D.C. Code § 28-3901, *et seq.*;
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- i. Defendant has engaged in unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, *et seq.*;
- j. Defendant has engaged in unfair or deceptive acts or practices in violation of Ga. Stat. § 10-1-392, *et seq.*;
- k. Defendant has engaged in unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, *et seq.*;
- l. Defendant has engaged in unfair or deceptive acts or practices in violation of Idaho Code § 48-601, *et seq.*;
- m. Defendant has engaged in unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, *et seq.*;
- n. Defendant has engaged in unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5.1, *et seq.*;
- o. Defendant has engaged in unfair or deceptive acts or practices in violation of Iowa Code § 714.1b, *et seq.*;
- p. Defendant has engaged in unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, *et seq.*;
- q. Defendant has engaged in unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, *et seq.*;
- r. Defendant has engaged in unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, *et seq.*;
- s. Defendant has engaged in unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, *et seq.*;

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- t. Defendant has engaged in unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13-101, *et seq.*;
- u. Defendant has engaged in unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*;
- v. Defendant has engaged in unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, *et seq.*;
- w. Defendant has engaged in unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, *et seq.*;
- x. Defendant has engaged in unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75-24-1, *et seq.*;
- y. Defendant has engaged in unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, *et seq.*;
- z. Defendant has engaged in unfair or deceptive acts or practices in violation of Mont. Code § 30-14-101, *et seq.*;
- aa. Defendant has engaged in unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*;
- bb. Defendant has engaged in unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*;
- cc. Defendant has engaged in unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*;
- dd. Defendant has engaged in unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8-1, *et seq.*;

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- ee. Defendant has engaged in unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57-12-1, *et seq.*;
- ff. Defendant has engaged in unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*;
- gg. Defendant has engaged in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;
- hh. Defendant has engaged in unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*;
- ii. Defendant has engaged in unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*;
- jj. Defendant has engaged in unfair or deceptive acts or practices in violation of Okla. Stat. tit. 15 § 751, *et seq.*;
- kk. Defendant has engaged in unfair or deceptive acts or practices in violation of Or. Rev. Stat. §646.605, *et seq.*;
- ll. Defendant has engaged in unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201-1, *et seq.*;
- mm. Defendant has engaged in unfair or deceptive acts or practices in violation of R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- nn. Defendant has engaged in unfair or deceptive acts or practices in violation of S.C. Code Laws § 39-5-10, *et seq.*;
- oo. Defendant has engaged in unfair or deceptive acts or practices in violation of S.D. Code Laws § 37-24-1, *et seq.*;

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- pp. Defendant has engaged in unfair or deceptive acts or practices in violation of Tenn. Code § 47-18-101, *et seq.*;
- qq. Defendant has engaged in unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*;
- rr. Defendant has engaged in unfair or deceptive acts or practices in violation of Utah Code Ann. § 13-1 1-1, *et seq.*;
- ss. Defendant has engaged in unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245 1, *et seq.*;
- tt. Defendant has engaged in unfair or deceptive acts or practices in violation of Va. Code § 59.1-196, *et seq.*;
- uu. Defendant has engaged in unfair or deceptive acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*;
- vv. Defendant has engaged in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-101, *et seq.*;
- ww. Defendant has engaged in unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, *et seq.*; and
- xx. Defendant has engaged in unfair or deceptive acts or practices in violation of Wyo. Stat. § 40-12-100, *et seq.*

IX. FOURTH CAUSE OF ACTION: UNJUST ENRICHMENT

9.1 Incorporation. Plaintiffs re-allege and incorporate herein the allegations contained above.

9.2 Unjust Enrichment. Defendant has been unjustly enriched under circumstances where, in justice and equity, defendant should not be entitled to retain such money. Such unjust

1 enrichment has resulted from payment for licenses sold for Windows XP in PCs certified by
2
3 Microsoft as "Windows Vista Capable," and upgrades from Vista Basic to Vista Premium.
4

5 **X. PRAYER FOR RELIEF**
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7 As a result of the foregoing, plaintiffs and the proposed Class members request that the
8
9 Court enter an order or judgment against defendant including the following:
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11 1. Class Certification. Certification of the action as a class action and appointment
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13 of plaintiffs as class representatives and their counsel of record as class counsel;
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15 2. Damages. Damages in an amount to be proven at trial;
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17 3. Exemplary Damages. Damages and such other relief, including punitive or treble
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19 damages, provided by the statutes cited herein;
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21 4. Equitable Relief. Equitable relief in the form of rescission, reformation, specific
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23 performance, restitution and/or disgorgement of all profits received by defendant as a result of
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25 deceptive conduct as alleged herein;
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27 5. Injunctive Relief. Appropriate injunctive relief;
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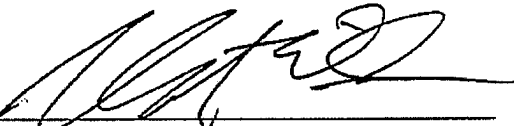
29 6. Fees and Costs. The costs of bringing this suit, including reasonable attorneys'
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31 fees; and
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33 7. Other Relief. All further relief to which plaintiffs and members of the proposed
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35 Class may be entitled at law or in equity.
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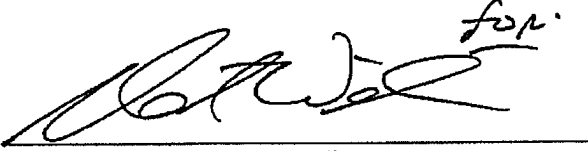
DATED this 12th day of July, 2007.

GORDON TILDEN THOMAS & CORDELL LLP

By 

Jeffrey I. Tilden, WSBA #12219
Jeffrey M. Thomas, WSBA #21175
Michael Rosenberger, WSBA #17730
Mark A. Wilner, WSBA #31550

KELLER ROHRBACK L.L.P.

By 

William C. Smart, WSBA #8192
Ian S. Birk, WSBA #31431

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July ____, 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.

Counsel for Defendant Microsoft Corporation

Stephen M. Rummage, WSBA #11168
Cassandra Kinkead, WSBA #22845
Charles S. Wright, WSBA #31940
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
steверummage@dwt.com
cassandrakinkead@dwt.com
charleswright@dwt.com

GORDON TILDEN THOMAS & CORDELL LLP

By _____
Mark A. Wilner, WSBA #31550
Attorneys for Plaintiffs
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Telephone: (206) 467-6477
Facsimile: (206) 467-6292
Email: mwilner@gordontilden.com

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