

1 The Honorable Ricardo S. Martinez

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICROSOFT CORPORATION, a
Washington corporation,

11 Plaintiff,

12 v.

13 IMMERSION CORPORATION, a
14 Delaware corporation,

15 Defendant.

No. 2:07-cv-936RSM

**SUPPLEMENTAL DECLARATION OF
WENDY E. LYON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON BREACH OF CONTRACT**

Noted for Consideration: July 25, 2008
Oral Argument Requested

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17 I, Wendy E. Lyon, declare as follows:

18 1. I am one of the attorneys in the law firm of Riddell Williams, P.S., counsel
19 for Plaintiff Microsoft Corporation. I make this declaration based on personal knowledge.

20 2. Attached as Exhibit A is a true and correct copy of excerpts of the deposition
21 of Patrick Reutens taken on 3/24/08. [FILED UNDER SEAL]

22 3. Attached as Exhibit B is a true and correct copy of excerpts of the deposition
23 of Victor Viegas taken on 5/22/08. [FILED UNDER SEAL]

24 4. Attached as Exhibit C is a true and correct copy of excerpts of the deposition
25 of Martin Smith taken on 5/20/08. [FILED UNDER SEAL]

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SUPP. DECL. OF LYON IN SUPPORT OF PLNTF'S MOT. FOR PART.
SUMM. JUDGMNT ON BREACH (No. 2:07-CV-936RSM)- 1
4820-0691-0466.01
072508/0929/20363.00411

Riddell Williams p.s.
1001 FOURTH AVENUE
SUITE 4500
SEATTLE, WA 98154-1192
206.624.3600

1 5. Attached as Exhibit D is a true and correct copy of excerpts of the deposition
2 of Alan Gordon taken on 6/11/08. [FILED UNDER SEAL]

3 6. Attached as Exhibit E are true and correct copies of excerpts of the
4 depositions of Barry Spector taken on 4/15/08 and Marc Brown taken on 4/11/08.
5 Immersion cites part of this testimony to argue that Microsoft admits that settlement is
6 different from satisfying a judgment. However, taken in context, it is clear that Marc
7 Brown did not agree that the definition of "Settlement" in the proposed consulting
8 agreement included payment on a verdict, while the ordinary meaning did not. For
9 example, when asked if the ordinary definition would not encompass payment on a verdict,
10 he testified, "If you ask me what the ordinary course definition of the word "settlement"
11 would be, it would be the -- the ending of the litigation, in whatever manner." Brown
12 Dep., 59:15-23; and see generally pages 57-63. Similarly, Immersion quotes Barry Spector
13 as agreeing that a settlement is different than a satisfaction of a judgment. However, this
14 quote taken in context makes clear that the parties understood that settlement included,
15 among other things, payment of a judgment. Spector Dep., 38-48. [FILED UNDER
16 SEAL.]

17 7. Section 17.8 of the treatise Negotiation and Settlement by Eugene F. Lynch,
18 et al. (2005) makes it clear that there are many different ways to settle a case and to draft
19 settlement agreements. It reads in part:

20 "Creative negotiators have devised many different ways to
21 settle disputes."

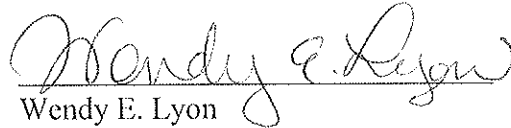
22 "Flexibility of negotiated settlement is one of its strengths.
23 "No single 'right-way' exists to structure any agreement—
24 you may incorporate aspects of many different formulas into
25 a single agreement. Every problem is unique and you should
26 individually tailor every settlement agreement."

 "Any type of agreement is appropriate if it serves the
interests of your client. The terms of the agreement itself
depend largely on desires of the parties, creativity of the
attorneys and complexity of the case."

1 8. Attached as Exhibit F is an email from Peter Berger (Microsoft outside
2 counsel) to Patrick Reutens (Immersion in-house counsel), dated July 24, 2005 at 5:26 p.m.
3 Attached to the email is a redlined version of the SLA, which in section 2(e) modifies the
4 language defining “settlement amount” by moving the phrase “in connection with the
5 settlement of the Sony Lawsuit” so that it no longer qualifies the primary phrase. This
6 version also creates the additional definitions under (a), which is qualified by the phrase “in
7 connection with the settlement of the Sony Lawsuit,” and (b), which captures other
8 agreements and transactions. This email was sent hours after the email with attached
9 version of the SLA referenced in Immersion’s Response and attached to the Heinrich
10 Declaration as Exhibit 45. [FILED UNDER SEAL]

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

13 Executed on July 25th, 2008 at Seattle, Washington.

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15 Wendy E. Lyon
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1 CERTIFICATE OF SERVICE

2 I, Margaret R. Friedmann, declare as follows:

3 I am over 18 years of age and a citizen of the United States. I am employed as a
4 legal secretary by the law firm of Riddell Williams P.S.

5 On the date noted below, I electronically filed the foregoing document titled


6 **SUPPLEMENTAL DECLARATION OF WENDY E. LYON IN SUPPORT OF**
7 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON**
8 **BREACH OF CONTRACT [Exhibits A-F filed under seal]**

9 with the Clerk of the Court using the CM/ECF system which will send notification of such
10 filing to the following counsel for Immersion Corporation:

11 Bradley S. Keller Jofrey M. McWilliam Email: bkeller@byrneskeller.com jmcwilliam@byrneskeller.com	12 Richard M. Birnholz Morgan Chu Alan J. Heinrich David R. Kaplan Email: rbirnholz@irell.com mchu@irell.com aheinrich@irell.com dkaplan@irell.com
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14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 Executed at Seattle, Washington this 25th day of July, 2008.

17 

18 Margaret R. Friedmann
19 Legal Secretary, Riddell Williams P.S.
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21 Seattle, WA 98154
22 Phone: (206) 624-3600
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