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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a Washington)
corporation,)

Plaintiff,)

v.)

IMMERSION CORPORATION, a Delaware)
corporation,)

Defendant.)

No. CV07 936RSM
**IMMERSION CORPORATION’S
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS**
JURY DEMAND

Defendant and Counterclaimant Immersion Corporation (“Immersion”) answers the First Amended Complaint for Breach of Contract (the “Amended Complaint”) of Plaintiff Microsoft Corporation (“Microsoft”) as follows:

PARTIES

1. In response to paragraph 1: Immersion admits on information that Microsoft is a corporation organized and existing under the laws of the State of Washington and that Microsoft has its principal place of business in Redmond, Washington. Immersion lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations set forth therein and on that basis denies these allegations.

2. In response to paragraph 2: Admitted.

1 **JURISDICTION AND VENUE**

2 3. In response to paragraph 3: Immersion admits that Microsoft purports to base
3 subject matter jurisdiction on 28 U.S.C. § 1332. To the extent that paragraph 3 consists of
4 conclusions of law, Immersion states that no response is required.

5 4. In response to the first sentence of paragraph 4: Immersion denies that it is found
6 in and transacts substantial business in this judicial district. In response to the second sentence
7 of paragraph 4, Immersion admits that Microsoft purports to base venue on 28 U.S.C. § 1391.
8 The remaining allegations of paragraph 4 are conclusions of law to which no response is
9 required; to the extent that they may be deemed allegations of fact, they are denied.

10 5. In response to paragraph 5: Immersion admits that Immersion and Microsoft
11 entered into a Sublicense Agreement as of July 25, 2003, that provides that “each Party consents
12 to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington,
13 unless no federal subject matter jurisdiction exists, in which case each Party consents to
14 exclusive jurisdiction and venue in the Superior Court of King County, Washington.” Except as
15 expressly admitted herein, Immersion otherwise denies the allegations set forth in paragraph 5.

16 **FACTUAL BACKGROUND**

17 6. In response to paragraph 6: Immersion admits that it owns patents covering,
18 among other things, technology for providing tactile sensations to users of interactive computer
19 applications.

20 7. In response to paragraph 7: Admitted.

21 8. In response to paragraph 8: Immersion admits that on July 25, 2003, Immersion
22 and Microsoft entered into a Settlement Agreement and Mutual Release as well as a Sublicense
23 Agreement and other agreements. Immersion states that such agreements speak for themselves.
24 Except as expressly admitted herein, Immersion otherwise denies the allegations set forth in
25 paragraph 8.

1 9. In response to paragraph 9: The allegations in paragraph 9 are conclusions of law
2 to which no response is required; to the extent that they may be deemed allegations of fact, they
3 are denied. Immersion further states that the Sublicense Agreement speaks for itself.

4 10. In response to paragraph 10: The allegations in paragraph 10 are conclusions of
5 law to which no response is required; to the extent that they may be deemed allegations of fact,
6 they are denied. Immersion further states that the Sublicense Agreement speaks for itself.

7 11. In response to paragraph 11: The allegations in paragraph 11 are conclusions of
8 law to which no response is required; to the extent that they may be deemed allegations of fact,
9 they are denied. Immersion further states that the Sublicense Agreement speaks for itself.

10 12. In response to paragraph 12: Immersion admits that on September 21, 2004, the
11 jury in the action in the United States District Court for the Northern District of California
12 entitled *Immersion Corporation v. Sony Computer Entertainment America, Inc., and Sony*
13 *Computer Entertainment, Inc.*, Northern District of California Case No. C02-0710-CW (WDB)
14 returned a verdict in favor of Immersion and against Sony and awarded damages in the amount
15 of \$82 million. Immersion further states that the proceedings in this District Court action are of
16 record and speak for themselves.

17 13. In response to paragraph 13: Immersion admits that the District Court entered a
18 judgment in favor of Immersion awarding Immersion damages on the jury verdict, and pre-
19 judgment interest and costs. Except as expressly admitted herein, Immersion otherwise denies
20 the allegations set forth in paragraph 13 of the Amended Complaint. Immersion further states
21 that the proceedings in this District Court action are of record and speak for themselves.

22 14. In response to the first sentence of paragraph 14: Immersion admits that on
23 March 24, 2005, the United States District Court for the Northern District of California in Case
24 No. C02-0710 issued an "Order Entering Permanent Injunction and Granting Defendants'
25 Motion to Stay Injunction Pending Appeal," which speaks for itself. The remaining allegations
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1 of paragraph 14 are conclusions of law to which no response is required; to the extent that they
2 may be deemed allegations of fact, they are denied.

3 15. In response to paragraph 15: Denied.

4 16. In response to paragraph 16: Denied.

5 17. In response to paragraph 17: Immersion admits that representatives of
6 Immersion, Sony Computer Entertainment America, Inc., and Sony Computer Entertainment,
7 Inc., executed a document entitled "Agreement" on or about March 1, 2007, and that Immersion
8 subsequently filed a redacted copy of that Agreement with the Securities and Exchange
9 Commission as part of a quarterly report. Immersion further admits that as of March 1, 2007,
10 Sony had not satisfied the Amended Judgment entered against Sony. Except as expressly
11 admitted herein, Immersion otherwise denies the allegations set forth in paragraph 17.

12 18. In response to paragraph 18: The allegations in paragraph 18 are conclusions of
13 law to which no response is required; to the extent that they may be deemed allegations of fact,
14 they are denied. Immersion further states that the Agreement between Immersion and Sony
15 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

16 19. In response to paragraph 19: The allegations in paragraph 19 are conclusions of
17 law to which no response is required; to the extent that they may be deemed allegations of fact,
18 they are denied. Immersion further states that the Agreement between Immersion and Sony
19 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

20 20. In response to paragraph 20: The allegations in paragraph 20 are conclusions of
21 law to which no response is required; to the extent that they may be deemed allegations of fact,
22 they are denied. Immersion further states that the Agreement between Immersion and Sony
23 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

24 21. In response to paragraph 21: The allegations in paragraph 21 are conclusions of
25 law to which no response is required; to the extent that they may be deemed allegations of fact,
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1 they are denied. Immersion further states that the Agreement between Immersion and Sony
2 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

3 22. In response to paragraph 22: The allegations in paragraph 22 are conclusions of
4 law to which no response is required; to the extent that they may be deemed allegations of fact,
5 they are denied. Immersion further states that the Agreement between Immersion and Sony
6 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

7 23. In response to paragraph 23: Denied.

8 24. In response to paragraph 24: Immersion admits that Immersion issued a press
9 release on March 1, 2007, and states that such press release speaks for itself. Except as expressly
10 admitted herein, Immersion otherwise denies the allegations set forth in paragraph 24.

11 25. In response to paragraph 25: Denied.

12 26. In response to paragraph 26: Denied. Immersion further states that the
13 proceedings in the United States Court of Appeals for the Federal Circuit are of record and speak
14 for themselves.

15 27. In response to paragraph 27: Immersion admits that on March 16, 2007,
16 Immersion and Sony filed a “Stipulation and [Proposed] Order Dissolving Permanent
17 Injunction,” which the District Court in Case No. C02-0710-CW entered on March 19, 2007.
18 The Stipulation provided, *inter alia*, that “Nothing herein shall have any impact or effect on the
19 Amended Judgment.” Except as admitted herein, Immersion denies the allegations set forth in
20 this paragraph. Immersion further states that the proceedings in this District Court action are of
21 record and speak for themselves.

22 28. In response to paragraph 28: The allegations in paragraph 28 are conclusions of
23 law to which no response is required; to the extent that they may be deemed allegations of fact,
24 they are denied. Immersion further states that the Agreement between Immersion and Sony
25 Computer Entertainment America, Inc., and Sony Computer Entertainment, Inc., speaks for itself.

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1 29. In response to paragraph 29: Immersion admits that Microsoft demanded
2 payment from Immersion under the Sublicense Agreement and that Immersion has not paid
3 Microsoft. Except as expressly admitted, Immersion denies the allegations of paragraph 29 and
4 specifically denies that any payment is due Microsoft.

5 30. In response to paragraph 30: Denied.

6 **CLAIM FOR RELIEF: BREACH OF CONTRACT**

7 31. In response to paragraph 31: The allegations in paragraph 31 are conclusions of
8 law to which no response is required; to the extent that they may be deemed allegations of fact,
9 they are denied.

10 32. In response to paragraph 32: Denied.

11 33. In response to paragraph 33: Denied.

12 34. In response to paragraph 34: Denied.

13 35. In response to paragraph 35: Denied.

14 **AFFIRMATIVE DEFENSES**

15 36. Immersion further pleads the following separate and additional defenses to the
16 Amended Complaint. By pleading these defenses, Immersion does not in any way agree or
17 concede that Immersion has the burden of proof or persuasion on any of these issues. In addition
18 to the defenses described below, Immersion expressly reserves the right to allege additional
19 defenses as they become known through the course of discovery.

20 37. Immersion hereby incorporates the foregoing paragraphs as if set forth fully for
21 each of the following Affirmative Defenses.

22 **FIRST AFFIRMATIVE DEFENSE**
23 **(Failure to State a Cause of Action)**

24 38. The Amended Complaint fails to state facts sufficient to constitute a cause of
25 action against Immersion.

1 **EIGHTH AFFIRMATIVE DEFENSE**
2 **(Unjust Enrichment)**

3 45. The Amended Complaint is barred in whole or in part because it seeks relief from
4 Immersion that, if granted, would result in unjust enrichment to Microsoft.

5 **NINTH AFFIRMATIVE DEFENSE**
6 **(Unconscionability)**

7 46. The Amended Complaint is barred in whole or in part because it seeks relief from
8 Immersion that, if granted, would render the Sublicense Agreement unconscionable.

9 **TENTH AFFIRMATIVE DEFENSE**
10 **(No Entitlement to Prejudgment Interest)**

11 47. Any claim for prejudgment interest is barred as to any purported cause of action
12 for which such relief is not available.

13 **ELEVENTH AFFIRMATIVE DEFENSE**
14 **(Additional Defenses)**

15 48. Immersion has insufficient information or knowledge upon which to form a belief
16 as to whether Immersion may have additional, as yet unstated, affirmative defenses available,
17 and based thereon, Immersion reserves the right to assert any such affirmative defenses in the
18 event that discovery indicates that they are proper.

19 **COUNTERCLAIMS**

20 Immersion alleges its counterclaims against Microsoft as follows:

21 **JURISDICTION AND VENUE**

22 49. This is an action for breach of contract. This Court has subject matter jurisdiction
23 over these counterclaims pursuant to 28 U.S.C. § 1367 because said counterclaims form part of
24 the same case or controversy as the claim contained in Microsoft's Amended Complaint.

25 50. Personal jurisdiction over Microsoft is proper in this Court as Microsoft is a
26 corporation organized and existing under the laws of the State of Washington, with its principal
place of business in Redmond, Washington.

1 51. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b) and (c)
2 because, among other reasons, Microsoft resides in this judicial district, is subject to personal
3 jurisdiction in this judicial district, and has already appeared in this action.

4 **PARTIES**

5 52. Defendant-Counterclaimant Immersion is a corporation organized and existing
6 under the laws of Delaware, having a principal place of business at 801 Fox Lane, San Jose,
7 California 95131. Founded in 1993, Immersion is a recognized leader in developing, licensing
8 and marketing “haptic” technology that allows people to interact with computers and other
9 devices using their sense of touch.

10 53. On information and belief, Plaintiff-Counterdefendant Microsoft is a corporation
11 organized and existing under the laws of the State of Washington, having a principal place of
12 business in Redmond, Washington.

13 **FACTUAL BACKGROUND**

14 54. Microsoft’s Original Complaint in this case (the “Original Complaint”) and its
15 Amended Complaint contain allegations relating to an Agreement between Immersion, on the
16 one hand, and Sony Computer Entertainment America, Inc., and Sony Computer Entertainment,
17 Inc., on the other (the “Sony Agreement”). Microsoft contends that the Sony Agreement
18 somehow constitutes a settlement of the “Sony Lawsuit,” as that term is defined in the
19 Sublicense Agreement, even though Immersion obtained a final judgment and other court-
20 ordered relief against Sony in the “Sony Lawsuit,” which Sony satisfied. Microsoft further
21 contends that as a result of the Sony Agreement, Immersion allegedly owes certain sums to
22 Microsoft under the Sublicense Agreement.

23 55. On or around March 2, 2007, Microsoft notified Immersion that it believed
24 Immersion owed Microsoft certain sums under the Sublicense Agreement as a result of the Sony
25 Agreement, including a portion of Immersion’s judgment against Sony. To allow Microsoft an
26

1 opportunity to review the Sony Agreement, on May 11, 2007, Immersion and Microsoft entered
2 into a Confidentiality Agreement (the “Confidentiality Agreement”).

3 56. Under the Confidentiality Agreement, Microsoft agreed that the Sony Agreement
4 “will not be provided to, shared with or otherwise disclosed to any person or entity, including
5 any person or entity inside or outside of Microsoft Corporation” other than certain enumerated
6 persons.

7 57. The Confidentiality Agreement further provides that “Microsoft and its counsel
8 reserve their rights to use [the Sony Agreement] in connection with a future dispute or litigation
9 relating to the [SLA], **subject to an appropriate confidentiality agreement or court order**
10 **that may be negotiated or otherwise entered.**” [Emphasis added.]

11 58. Pursuant to the Confidentiality Agreement, on May 14, 2007, Immersion provided
12 Microsoft with an unredacted copy of the Agreement between Immersion and Sony.

13 59. On June 18, 2007, Microsoft publicly filed its Original Complaint in this case. In
14 its Original Complaint, Microsoft publicly disclosed confidential terms of the Sony Agreement
15 that had never been publicly disclosed before Microsoft filed the Original Complaint.

16 60. Immersion is informed and believes that Microsoft obtained the confidential terms
17 of the Sony Agreement disclosed in its Original Complaint from the Sony Agreement that
18 Immersion provided to Microsoft under the terms of the parties’ Confidentiality Agreement and
19 only from such Sony Agreement.

20 61. Microsoft did not request or negotiate any confidentiality agreement nor obtain a
21 court order to prevent the public disclosure of the confidential terms of the Sony Agreement
22 contained in the Original Complaint before Microsoft’s public filing of the Original Complaint.
23 Immersion provided this information to Microsoft expressly in reliance on Microsoft’s entering
24 into the Confidentiality Agreement. Yet Microsoft filed this information publicly in violation of
25 Microsoft’s obligations under the parties’ Confidentiality Agreement.
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1 **CERTIFICATE OF SERVICE**

2 The undersigned attorney certifies that on the 4th day of September, 2007, I
3 electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which
4 will send notification of such filing to the following:

5 Paul J. Kundtz (pkundtz@riddellwilliams.com, ebastien@microsoft.com,
mfriedmann@riddellwilliams.com, Steve.Aeschbacher@microsoft.com)

6 Blake Marks-Dias (bmarksdias@riddellwilliams.com,
dhammonds@riddellwilliams.com)

7 Wendy E. Lyon (wlyon@riddellwilliams.com, mfriedmann@riddellwilliams.com)
Riddell Williams P.S.

8 1001 Fourth Avenue Plaza, Suite 4500

9 Seattle, WA 98154-3600

Attorneys for Plaintiff

10
11 /s/Jofrey M. McWilliam, WSBA #28441

12 Byrnes & Keller LLP

13 1000 Second Avenue, 38th Floor

14 Seattle, WA 98104

15 Telephone: (206) 622-2000

16 Facsimile: (206) 622-2522

17 jmcwilliam@byrneskeller.com