The Hon. Ricardo S. Martinez 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 9 10 MICROSOFT CORPORATION, a No. 2:07-cv-936 RSM Washington corporation, **MICROSOFT'S ANSWER AND** 11 Plaintiff, AFFIRMATIVE DEFENSES TO **DEFENDANT IMMERSION'S** 12 COUNTERCLAIMS ٧. 13 IMMERSION CORPORATION, a 14 Delaware corporation, Defendant. 15 16 Microsoft Corporation ("Microsoft"), answers Immersion Corporation's 17 ("Immersion") Counterclaims as follows: 18 1. Microsoft admits paragraphs 49-51 of the Counterclaims. 19 2. Microsoft admits the first sentence in paragraph 52 of the 20 Counterclaims. Microsoft admits that Immersion was founded in 1993, and that it 21 has licensed and marketed "haptic" technology that allows people to interact with 22 computers and other devices using their sense of touch. Microsoft denies the 23 remaining allegations in paragraph 52 of the Counterclaims. 24 3. Microsoft admits paragraph 53 of the Counterclaims. 25 26 MICROSOFT'S ANSWER AND AFFIRMATIVE DEFENSES TO Riddell Williams P.S. 1001 FOURTH AVENUE DEFENDANT'S COUNTERCLAIMS (No. 2:07-cv-936RSM) - 1 **SUITE 4500** SEATTLE, WA 98154-1192 206.624.3600 4827-0179-5073.01 091707/1520/20363.00411

- 4. Microsoft admits that it has filed an action against Immersion, arising out of Immersion's settlement of its lawsuit against Sony. Microsoft's Original and Amended Complaint are a matter of record in this case, and speak for themselves. Microsoft denies Immersion's characterizations of those pleadings, and denies the remaining allegations in paragraph 54 of the Counterclaims.
- 5. Microsoft admits the first sentence in paragraph 55 of the Counterclaims, and that Immersion and Microsoft entered into a Confidentiality Agreement. Microsoft denies that the Confidentiality Agreement was necessary or required for Microsoft to review the Sony Agreement, which Immersion was required to produce to Microsoft pursuant to the Microsoft/Immersion Sublicense Agreement. Microsoft denies any remaining allegations in paragraph 55 of the Counterclaims.
- 6. Microsoft admits that the language quoted in paragraphs 56 and 57 of the Counterclaims is contained in the Confidentiality Agreement. Microsoft denies the remaining allegations in paragraphs 56 and 57 of the Counterclaims.
- 7. Microsoft admits that Immersion provided Microsoft with an unredacted copy of the Agreement between Immersion and Sony. Microsoft denies any remaining allegations in paragraph 58 of the Counterclaims.
- 8. Microsoft admits only that it filed its Original Complaint in this case on June 18, 2007. Microsoft denies the remaining allegations in paragraph 59 of the Counterclaims.
- 9. Microsoft admits that it obtained unredacted terms of the Sony Agreement from the unredacted copy of the Sony Agreement provided to Microsoft by Immersion. Microsoft denies the remaining allegations in paragraph 60 of the Counterclaims.

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- 10. Microsoft admits that it did not request or negotiate any confidentiality agreement nor obtain a court order to prevent the public disclosure of the terms of the Original Complaint before filing the Original Complaint.

  Microsoft denies the remaining allegations in paragraph 61 of the Counterclaims.
- 11. Microsoft admits that its counsel received a letter referenced in paragraph 62 of the Counterclaims, the contents of which speak for themselves.
- 12. Microsoft admits that on June 25, 2007 it filed in this Court a Motion to Seal Original Complaint and an Amended Complaint which was identical to the original Complaint except that it omitted two numbers in the Sony Agreement contained in paragraph 21 of the Original Complaint. All remaining allegations in paragraph 63 of the Counterclaims are denied.
  - 13. Microsoft denies paragraph 64 of the Counterclaims.
- 14. The allegations in paragraphs 65 through 69 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, Microsoft denies the same.

## **AFFIRMATIVE DEFENSES**

- 1. Immersion's Counterclaims fail to state facts sufficient to constitute a claim for relief;
- 2 Immersion failed to mitigate damages and protect itself from avoidable circumstances;
- 3. Microsoft reserves the right to assert additional defenses as discovery proceeds.

## PRAYER FOR RELIEF

WHEREFORE, having fully answered Defendant's counterclaims, Plaintiff prays for relief as follows:

1. Dismissal of Defendant's counterclaims with prejudice;

## CERTIFICATE OF SERVICE

The undersigned certifies that on the 18 <sup>th</sup> day of September, 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:
Bradley S. Keiler

ე	Bradley S. Keller
	Jofrey M. McWilliam
6	Byrnes & Keller LLP
	1000 Second Avenue, 38 <sup>th</sup> Floor
7	Seattle, WA 98104-4082
	Phone: (206) 622-2000; Fax: (206) 622-2522
8	Email: bkeller@byrneskeller.com
	imcwilliam@byrneskeller.com

A copy of this document has also been served via U.S. Mail and email on 10 the following counsel who have filed applications to appear Pro Hac Vice in this 11 matter:

13 Richard M. Birnholz Alan J. Heinrich 14 Morgan Chu Irell & Manella LLP 15 1800 Avenue of the Stars, Suite 900 Los Angeles, CA 90067-4276 Phone: (310) 277-1010; Fax: (301) 203-7199 16 Email: rbirnholz@irell.com 17 aheinrich@irell.com

mchu@irell.com

Executed at Seattle, Washington this 18<sup>th</sup> day of September, 2007.

Maisaut K. Margaret R. Friedmann

Legal Secretary, Riddell Williams P.S. 1001 Fourth Avenue Plaza, Suite 4500 Seattle, WA 98154

Phone: (206) 624-3600 Fax: (206) 389-1708

email: mfriedmann@riddellwilliams.com

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