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6 7 8	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON		
9 10 11 12	MICROSOFT CORPORATION, Plaintiff, v.	IN ADMIRALTY Case No. COMPLAINT FOR CARGO DAMAGE	
13 14 15	DHL EXPRESS (USA), INC., Defendant.	Demand for Jury Trial	
16 17 18	COMES NOW plaintiff MICROSOFT CORPORATION ("Plaintiff" or "MICROSOFT"), and with this complaint alleges against the above-named defendant upon information and belief as follows:		
19 20	JURISDICTION		
21	1. This is a case of admiralty and maritime jurisdiction, within the provisions of 28		
22 23 24 25	USC § 1333 as hereinafter more fully appears, meaning of Rule 9(h), Federal Rules of Civil P	and is an admiralty and maritime claim within the rocedure.	
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2. Alternatively, this is a case of federal question jurisdiction, within the provisions of 28 U.S.C. §§ 1331 and 1337, involving interstate carriage of goods under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 11706 and/or 49 U.S.C. § 14706, and under Federal common law, with an amount in controversy exceeding \$10,000, exclusive of costs and interest.

VENUE

3. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391 because this is a district where the defendant resides, and per contractual agreement.

FIRST CLAIM FOR RELIEF

4. Plaintiff at and during the times hereinafter mentioned was a corporation organized and existing under the laws of one of the States of the United States of America.

5. At and during all the times hereinafter mentioned, the defendant was and now is a legal entity capable of being sued in this Court and engaged in business as a common carrier of merchandise by water or land for hire, and/or as freight forwarder, broker, transportation intermediary, and/or agent of some or all of the above, with an office, agent, or doing business within the jurisdiction of this court.

6. Plaintiff is the owner, shipper, or consignee of the cargo described in Exhibit A, attached hereto, and is the proper party to bring this action on its own behalf and as agent and trustee on behalf of any and all other parties interested in such cargos as their respective interests may ultimately appear.

7. Defendant carried, handled, and/or was the bailee of, consolidated, forwarded, or controlled plaintiff's personal property ("cargos") as described in Exhibit A hereto.

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8. This is a case of cargo damage resulting from breach by the defendant of its contractual duties, or other fault, in its capacity as common carrier or party to the contracts of affreightment, bailment, and/or other contracts with respect to cargos identified in Exhibit A attached hereto, carried as indicated in Exhibit A, and which allegedly suffered a derailment and subsequently were discharged and delivered damaged and short at the place of shipment named in Exhibit A, such damage being described and amounting to the sums stated in Exhibit A.

9. At no time has plaintiff been compensated for its damages, as alleged above, by defendant, despite demands made therefor. Defendant has refused and continues to refuse to pay plaintiff's damages.

10. As a proximate result of said breach and/or other fault, plaintiff has been damaged in an amount set forth in Exhibit A. In addition to that loss, plaintiff has incurred attorneys' fees and other recovery and mitigation expenses in amounts as yet unascertained.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

11. Plaintiff incorporates Paragraphs 1 through 7 and 9 through 10 of the First Claim for Relief of this Complaint, as if herein stated in full.

12. Defendant so negligently breached its duties as common carrier, handler, bailee, warehouseman, agent, or in other capacities with respect to the cargos identified in Exhibit A attached hereto, that said cargos were discharged and returned damaged (or not delivered at all) at the place of shipping named in Exhibit A, such damages described and amounting to the sums stated in Exhibit A.

COMPLAINT FOR CARGO DAMAGE - 3

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1	13. As a direct and proximate result of the conduct as aforesaid of defendant, plaintiff
2	has been damaged in an amount set forth in Exhibit A. In addition to that loss, plaintiff has
3	incurred attorney's fees and other recovery and mitigation expenses in amounts as yet
4	unascertained.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

PRAYER

WHEREFORE, plaintiff prays:

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- 1. That judgment be entered in favor of plaintiff against defendant for the amount of plaintiff's damages, together with interest and costs incurred;
 - 2. For costs of suit and any recoverable attorneys fees to which plaintiff may be entitled; and
 - 3. For such other further and different relief as this Court may deem just and proper in the premises.

Dated October 9, 2008.

LAW OFFICE OF JAMES F. WHITEHEAD

By

ames F. Whitehead, WSBA#6319 Attorney for MICROSOFT CORPORATION

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1	DEMAND FOR JURY TRIAL
2	Plaintiff MICROSOFT CORPORATION hereby demands a jury trial on any and all issues
3	triable by jury.
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5	Dated: October 9, 2008
6	LAW OFFICE OF JAMES F. WHITEHEAD
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8 9	By James F. Whitehead, WSBA#6319
10	Attorney for MICROSOFT CORPORATION
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