

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

	)	
NETSCAPE COMMUNICATIONS	)	
CORPORATION,	)	
466 Ellis Street	)	
Mountain View, California,	)	Civil Action No. _____
	)	
Plaintiff,	)	JURY TRIAL DEMANDED
	)	
v.	)	(Per Local Civil Rule 40.5, Related to Civil
	)	Action Nos. 98-1232 and 98-1233)
MICROSOFT CORPORATION,	)	
One Microsoft Way	)	
Redmond, Washington,	)	
	)	
Defendant.	)	
	)	
	)	

**COMPLAINT**

This action follows the determination of Microsoft Corporation’s (“Microsoft”) antitrust liability in *United States v. Microsoft*, Civil Action Nos. 98-1232 and 98-1233, unanimously affirmed by the Court of Appeals, where it was found that Microsoft’s illegal acts had “inflicted considerable harm on Netscape’s business.” Netscape Communications Corporation (“Netscape”) thus brings this action against Microsoft to prevent further injury to Netscape, to restore competition lost in the market for Web browsers, to foster competition in the market for operating systems, and to receive treble damages compensation for the harms inflicted upon it by Microsoft. Netscape seeks this relief under Sections 1 and 2 of the Sherman Act, sections 28-4502, 4503, 4508, and 4510 of the District of Columbia Code, and

under the common law, for harm resulting from Microsoft's anticompetitive conduct in the markets for Intel-compatible personal computer ("PC") operating systems and Web browsers worldwide. Plaintiff alleges as follows:

### **Nature of The Action**

1. In 1994, the year Netscape was founded, it released the final version of its initial Web browser product, Netscape Navigator 1.0. The release of Netscape Navigator is widely viewed as having sparked the Internet revolution, which has transformed not just the world of personal computing, but the way that people communicate, interact, and conduct business. The demand for Netscape's browser and its companion server products, Netscape Commerce Server 1.0 and Netscape Communications Server 1.0, was enormous and unprecedented. By 1995, Netscape was the fastest-growing software company in history, and the demand for its browser and related products was causing its revenues to skyrocket.

2. Netscape's browser and related products proved to be a catalyst for intense developer interest in the Internet. For example, more than 12,000 software developers joined the Netscape Development Partners Program in 1995. Netscape Navigator won more than 20 product awards in 1995 and, by the end of 1995, Netscape had distributed 15 million Web browsers around the world. Netscape's customers included 70 percent of the Fortune 100, and Netscape Internet Applications were being selected by large and influential customers like MCI, Dataquest and Dow Jones Corporation.

3. In 1994, at the same time Netscape began its dramatic rise, Microsoft was the largest and most important software company in the world, renowned for its marketing and financial muscle. By then, Microsoft had acquired monopoly power in the market for Intel-compatible PC

operating systems. Much of Microsoft's monopoly power reflects the fact that Microsoft's Windows operating system is the "platform" for which there are the greatest number, variety, and quality of applications and that therefore PC users select Windows in order to have access to these applications. In turn, because the vast majority of PC customers use the Windows operating system, writers of applications will write their programs to work with the Windows interfaces, in order to appeal to as many potential customers as possible. This self-reinforcing effect of PC customers choosing Windows because PC software developers write applications for Windows, and software developers choosing to make their applications compatible with Windows because most customers use Windows, presents a significant barrier to entry that has blunted attempts to develop alternative platforms to Windows. As a result, Microsoft has possessed and sustained its monopoly power for Intel-compatible PC operating systems for a lengthy period of time.

4. While Microsoft was late in recognizing the potential significance of the Internet, Netscape's remarkable success did not go unnoticed at Microsoft. The Netscape browser, Netscape Navigator, posed a direct threat to Microsoft's monopoly power for Intel-compatible PC operating systems, as it threatened to undermine the barriers to entry protecting the Windows platform monopoly. Netscape Navigator offered the potential to become an alternative competitive platform on which software applications and programs could run. In essence, the Netscape browser can be a software "layer" (also called "middleware") between the operating system and application programs, allowing software developers to write programs to interface with Navigator instead of with the PC operating system. Because the Netscape browser operates not only on Windows but also on a variety of other operating systems, if software developers could write programs that interface with Navigator, it would no longer

matter which operating system was on a PC user's computer. In other words, any PC user that had Netscape Navigator on its computer could run any software developed for Navigator regardless of the underlying operating system. The widespread adoption and use of Navigator therefore would create significant potential to reduce the dependence of most PC users on any particular operating system, such as Windows. In Microsoft Chairman Bill Gates' own words, Netscape Navigator threatened to turn Windows into mere "plumbing."

5. As Netscape achieved its phenomenal success in 1995, Microsoft immediately began taking steps to neutralize Netscape and the threat it posed. To address this competitive threat, Microsoft first tried to persuade Netscape to abandon its efforts to develop Navigator into an alternative platform, offering to divide the Web browser market between the two companies. Netscape refused. Once it became clear to senior executives at Microsoft that Netscape would not abandon its efforts to develop Navigator into a platform, Microsoft focused its efforts on ensuring that few developers would write their applications to rely on the interfaces that Navigator exposed. Developers would write to the interfaces exposed by Navigator in numbers large enough to threaten Microsoft only if they believed that Navigator would emerge as the standard software employed to browse the Web.

6. Microsoft thus developed its own Web browser, Internet Explorer, and set out to maximize Internet Explorer's share of Web browser usage at Navigator's expense through any means necessary. Within Microsoft, achieving a higher browser market share for Internet Explorer became "job 1." Bill Gates himself made this clear on January 5, 1996, stating that "[w]inning Internet browser share is a very very important goal for us."

7. To achieve its goal, Microsoft was not content to compete by attempting to offer a better Web browser product and persuading users to use its Web browser. As a senior Microsoft executive acknowledged, if Microsoft only competed on the merits, “I don’t understand how IE [Internet Explorer] is going to win.” Rather, Microsoft needed to illegally exploit its monopoly power over Intel-compatible PC operating systems in order to undercut Netscape’s ability to distribute its Web browser.

8. Microsoft thus embarked on a series of anticompetitive and exclusionary acts so as to undermine Netscape’s ability to grow into an alternative competitive platform. This series of acts included at least the following acts. Microsoft forced original equipment manufacturers (“OEMs”) to accept exclusionary license restrictions that caused them to stop dealing with Netscape and instead exclusively use Internet Explorer; indeed, Microsoft threatened OEMs with loss of their licenses to the Windows operating system if they did not comply with these illegal provisions. Microsoft “bolted together” its monopoly operating system and Internet Explorer, requiring every customer that wanted to purchase Microsoft’s monopoly operating system also to take Microsoft’s Web browser and making it difficult to remove Internet Explorer from the operating system. Microsoft provided early information on changes and upgrades to its monopoly operating systems – critical to all software developers – and other preferential support only to those developers that agreed to exclusionary arrangements with Microsoft, which had the effect of foreclosing distribution of Netscape’s browser. Microsoft coerced exclusionary dealing arrangements with Internet Access Providers and Internet Service Providers that limited Netscape’s browser distribution. Microsoft forced Apple to replace Netscape as its default browser with Internet Explorer by threatening Apple with loss of the Macintosh Office application. The purpose and effect of

Microsoft's anticompetitive and exclusionary campaign has been to reduce Navigator's market share and viability so as to prevent Netscape's Web browser from becoming a platform for software applications that could threaten Microsoft's Windows monopoly and to establish and maintain a Microsoft monopoly in the Web browser market.

9. A Web browser is a software program used to "surf" the World Wide Web. A company distributing Web browsers can generate income by licensing the browser and/or by enjoying increased revenues from web portals linked to the Web browser, licenses of server application software, sales of advertising and links on the Web browser, sales of web development tools and other sources of revenues linked to distribution of the Web browser. A company distributing a Web browser therefore enjoys higher profits from greater distribution of its browser, in terms of possible direct licensing revenues and other revenue streams that result from browser distribution. As just discussed, a Web browser can also be developed as a platform for software development.

10. There is a relevant market for Web browsers. In technical terms, a Web browser is a software program on a PC that presents a graphical interface designed to allow a user to be able to navigate, view, type in Uniform Resource Locators, move backward and forward, stop, reload and operate virtually all Web content located on separate servers. Products such as Netscape Navigator, Internet Explorer and Opera are Web browsers because they are designed to allow a user to perform all these functions and to access virtually all Web content. Other software products (including software programs that have some ability to access content on the World Wide Web) are not in the relevant market for Web browsers because they do not provide the full range of functionality offered by Web browsers and do not provide access to virtually all Web content. There is a demand by users for the full functionality

provided by Web browsers for which other software programs are not a substitute. New entry into the Web browser market is difficult, in part, because of the existence of network effects that cause Web developers to prefer to develop applications and content for the dominant Web browser and cause Web browser users to prefer the Web browser for which Web applications and content have been optimized.

11. In 1995, Netscape Navigator had a greater than 70 percent share of the Web browser market and had the potential to become an alternative platform that would tear down the barriers to entry in the Intel-compatible PC operating system market and compete with Windows. As a result of Microsoft's exclusionary campaign of illegal actions, Navigator's market share in the browser market today has fallen below 20 percent and Microsoft Internet Explorer's share is now above 80 percent. This loss of market share had a major adverse effect on Netscape's revenues and profitability. Today, it is estimated that Microsoft has more than 100 million browser users, a substantial percentage of whom would have chosen Netscape Navigator on its merits if not for Microsoft's methods of abusing its monopoly power to induce the usage of Internet Explorer. Microsoft's illegal conduct also succeeded in blunting the broad use of Netscape's browser as an alternative platform for software development.

12. Microsoft's illegal actions resulted in harm to competition and antitrust injury to Netscape in particular. Netscape was seriously damaged by Microsoft's illegal conduct in at least the following ways: it lost browser licensing revenues; it lost browser market share that would have led to other significant sources of revenues, including portal revenues and revenues from its enterprise software and products businesses; its marketing and distribution costs were significantly increased; it lost goodwill and going concern value; and it lost the profits that would have existed if Microsoft had not acted illegally

to prevent Netscape's browser technology from providing a competitive alternative to Microsoft's monopoly operating system as a development platform.

13. This lawsuit seeks to recover all the damages to Netscape, trebled in accordance with the law. Netscape also seeks equitable relief to eliminate the continuing effects of Microsoft's illegal conduct and to restore competition lost in the operating system market and in the Web browser market because of Microsoft's illegal conduct. Indeed, Microsoft's illegal actions and the harms to Netscape are ongoing.

### **The Governments' Case Against Microsoft**

14. The United States Department of Justice and the Attorneys General of nineteen (19) states brought suit against Microsoft in connection with many of these same facts and issues in the United States District Court for the District of Columbia in matters captioned *United States of America v. Microsoft Corp.*, No. 98-1232 and *State of New York et al. v. Microsoft Corporation*, No. 98-1233. On November 5, 1999 and April 3, 2000, after more than a year of proceedings, the Federal District Court issued Findings of Fact (84 F. Supp. 2d 9) and Conclusions of Law (87 F. Supp. 2d 30) determining that Microsoft's anticompetitive campaign against Netscape violated sections 1 and 2 of the Sherman Act, along with several state antitrust statutes, including D.C. Code §§28-4502, 4503. The Federal District Court's Findings repeatedly identify Netscape as a principal and prominent victim of Microsoft's illegal conduct, concluding that "[n]ot only did Microsoft prevent Navigator from undermining the applications barrier to entry, it inflicted considerable harm on Netscape's business in the process." Finding of Fact ¶ 379.

15. On June 7, 2000, the Federal District Court issued its Memorandum and Order and its Final Judgment with regard to the remedies it deemed necessary to ensure that Microsoft will not again occupy a position where it can abuse its monopoly power or otherwise diminish competition in the future. On June 28, 2001, the United States Court of Appeals for the District of Columbia issued an opinion that affirmed in part, reversed in part and remanded in part the District Court's rulings. *See United States of America v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001). Of most significance here, the Court of Appeals affirmed the District Court's central ruling that Microsoft has monopoly power in the market for Intel-compatible PC operating systems and that many of Microsoft's exclusionary business practices that harmed Netscape constituted an illegal abuse of Microsoft's monopoly power in violation of Section 2 of the Sherman Act and state statutes. Although the Court of Appeals ordered a remand of the case as to the precise remedies needed to redress Microsoft's illegal monopoly maintenance, the Court of Appeals upheld the District Court's Findings of Fact – findings that specifically describe how Microsoft's illegal behavior substantially harmed Netscape. In affirming that Microsoft had violated Section 2 of the Sherman Act, the Court of Appeals also concluded that Microsoft's illegal behavior harmed Netscape. *See, e.g.*, 253 F.3d at 75 (“Microsoft undertook a number of anticompetitive actions that seriously reduced the distribution of Navigator”) and *id.* at 71 (“By ensuring that the ‘majority’ of all IAP subscribers are offered IE either as the default browser or as the only browser, Microsoft's deals with the IAPs clearly have a significant effect in preserving its monopoly; they help keep usage of Navigator below the critical level necessary for Navigator or any other rival to pose a real threat to Microsoft's monopoly.”).

16. On August 7, 2001, Microsoft petitioned the Supreme Court for a writ of certiorari seeking review of the Court of Appeals' decision, including its decision not to vacate the District

Court's Findings of Fact and Conclusions of Law. In its petition, among other things, Microsoft argued that vacating the Findings of Fact was important because so long as the Court of Appeals' decision was valid, other "plaintiffs undoubtedly will argue that certain findings should be given preclusive effect." Nonetheless, on October 9, 2001, the Supreme Court denied Microsoft's certiorari petition.

17. On November 6, 2001, the Department of Justice and several state attorneys general tentatively agreed to a proposed final judgment in Civil Actions No. 98-1232 and No. 98-1233. The adequacy of the proposed remedies is now being determined under the Tunney Act process. Nine state attorneys general rejected the proposed final judgment as inadequate and are continuing to prosecute Civil Action No. 98-1233. Beginning in March 2002, the District Court is scheduled to hear testimony from the remaining state attorneys general on the proper remedies for Microsoft's illegal conduct at issue in that case.

18. Neither the Government nor the Federal District Court in Civil Actions No. 98-1232 and No. 98-1233 has addressed the question of the compensation and specific relief owed to Netscape as a result of its being directly injured by Microsoft's illegal conduct since 1995, leaving that issue to be decided in the context of this private civil action. In light of the Court of Appeals' final decision on liability in *United States v. Microsoft*, and the binding and preclusive effect of that decision and the affirmed Findings of Fact on subsequent claims for antitrust liability related to Microsoft's actions, Netscape now brings this action for injunctive relief, damages and other relief under federal and state antitrust statutes. In addition, notwithstanding the district and appellate court decisions against Microsoft in *United States v. Microsoft*, Microsoft has continued to engage in activities already adjudicated as illegal, and has undertaken further anticompetitive acts that now call for redress as well.

### **Jurisdiction And Venue**

19. The federal antitrust claims are instituted under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. The state antitrust actions are instituted under District of Columbia Code §§ 28-4502, 28-4503, 28-4508, and 28-4510. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1367.

20. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391, because defendant Microsoft transacts business and is found within this District.

### **The Parties**

21. Plaintiff Netscape Communications Corporation is a Delaware corporation with its principal place of business in Mountain View, California. Netscape pioneered the development of Web browsers to enable users to access content on the Internet even if they are not experienced computer users. Netscape's flagship product, Netscape Navigator, helped the Internet to explode in popularity and fueled the Internet revolution. On March 17, 1999, Netscape's ownership changed, but Netscape continues to operate today in the same lines of business as before, though injured by Microsoft's illegal acts.

22. Defendant Microsoft Corporation is organized under the laws of the State of Washington, with its principal place of business at One Microsoft Way, Redmond, Washington. Since its inception, Microsoft has focused primarily on developing and licensing software. Microsoft sells and licenses PC operating systems throughout the United States and the world and delivers copies of its operating systems and Web browsers to OEMs and retail customers across state lines and international

borders. Microsoft is engaged in, and its activities substantially affect, interstate and foreign commerce. Microsoft's activities also have a substantial impact on commerce in the District of Columbia.

**Count One**

**Sherman Act § 2 – Illegal Monopoly Maintenance of Intel-Compatible PC Operating Systems**

23. Plaintiff incorporates and restates the allegations in paragraphs 1 through 22 above.

24. There is a relevant market for the licensing of Intel-compatible PC operating systems worldwide.

25. Microsoft possesses monopoly power in the relevant market for the licensing of Intel-compatible PC operating systems. That market is characterized by significant entry barriers.

26. As was previously adjudicated and found in *United States v. Microsoft*, since at least 1995 Microsoft has willfully and wrongfully maintained and abused its monopoly power through anticompetitive and exclusionary behavior directed at Netscape, including anticompetitive behavior designed to prevent the Netscape Web browser from serving as an alternative platform that threatened Microsoft's monopoly power in the operating systems market.

27. The foregoing acts and practices have harmed consumers and competition.

28. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the

activities complained of are enjoined, Netscape also will continue to suffer injury for which Netscape is without an adequate remedy at law.

**Count Two**

**Sherman Act § 2 -- Further Acts of Illegal Monopoly Maintenance**

29. Plaintiff incorporates and restates the allegations in paragraphs 1 through 28 above.

30. There is a relevant market for the licensing of Intel-compatible PC operating systems worldwide.

31. Microsoft possesses monopoly power in the relevant market for the licensing of Intel-compatible PC operating systems. That market is characterized by significant entry barriers.

32. Even after having been adjudicated to have willfully and wrongfully maintained and abused its monopoly power through anticompetitive and exclusionary behavior directed at Netscape, Microsoft has continued its illegal conduct, and since the adjudication in Civil Actions No. 98-1232 and No. 98-1233, has engaged in further anticompetitive behavior to further reduce Navigator's market share and thereby eliminate any risk of Netscape developing its Web browser into an alternative platform that would threaten Microsoft's monopoly power in the relevant operating systems market.

33. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive conduct, have harmed consumers and competition.

34. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is

of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the activities complained of are enjoined, Netscape will suffer immediate and irreparable injury for which Netscape is without an adequate remedy at law.

**Count Three**  
**Sherman Act § 1 – Illegal Tying of Windows and Internet Explorer**

35. Plaintiff incorporates and restates the allegations in paragraphs 1 through 34 above.

36. There are relevant worldwide markets for the licensing of Intel-compatible PC operating systems and for Web browsers. Microsoft has had monopoly power in the relevant market for the licensing of Intel-compatible PC operating systems since at least 1994.

37. Microsoft has illegally tied its Web browser product, Internet Explorer, to its separate and distinct Intel-compatible PC operating system product, Windows.

38. The purpose and the effect of this tying are to prevent customers from choosing among Web browsers on their merits and to foreclose competing browsers from an important channel of distribution, thereby unreasonably restraining competition in the Web browser market. There are no benefits from this tying that outweigh the harm to competition in the Web browser market.

39. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive conduct, have harmed consumers and competition.

40. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the

activities complained of are enjoined, Netscape will suffer immediate and irreparable injury for which Netscape is without an adequate remedy at law.

**Count Four**

**Sherman Act § 2 – Illegal Monopolization of the Web Browser Market**

41. Plaintiff incorporates and restates the allegations in paragraphs 1 through 40 above.

42. There is a relevant market for Web browsers. The geographic market for Web browsers is worldwide.

43. For the last few years, Microsoft has possessed monopoly power in the relevant market for Web browsers. Microsoft's monopoly power in the market for Web browsers is protected by significant entry barriers.

44. Microsoft has willfully and wrongfully acquired, maintained and abused its monopoly power in Web browsers through anticompetitive and exclusionary behavior.

45. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive conduct, have harmed consumers and competition.

46. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the activities complained of are enjoined, Netscape will suffer immediate and irreparable injury for which Netscape is without an adequate remedy at law.

**Count Five**

**Sherman Act § 2 – Attempted Monopolization of the Web Browser Market**

47. Plaintiff incorporates and restates the allegations in paragraphs 1 through 46 above.

48. There is a relevant market for Web browsers. The geographic market for Web browsers is worldwide.

49. Targeting Netscape, Microsoft has willfully and wrongfully engaged in anticompetitive and exclusionary conduct in order to obtain monopoly power in the Web browser market. Microsoft has acted with a specific intent to monopolize, and to destroy effective competition in, the Web browser market. Microsoft's anti-competitive conduct has had a dangerous probability of success and Microsoft has in fact achieved a dominant position in the market for Web browsers. That dominant position combined with significant barriers to entry make it difficult for other companies to enter the Web browser market and compete with Microsoft.

50. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive conduct, have harmed consumers and competition.

51. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the activities complained of are enjoined, Netscape will suffer immediate and irreparable injury for which Netscape is without an adequate remedy at law.

### **Count Six**

#### **Parallel Violations of District of Columbia Code §§ 28-4502 and 28-4503**

52. Plaintiff incorporates and restates the allegations in paragraphs 1 through 51 above.

53. Microsoft's conduct as alleged herein also violates District of Columbia Code §§ 28-4502 and 28-4503.

54. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive conduct, have harmed consumers and competition.

55. Microsoft's anticompetitive and exclusionary conduct has directly and proximately caused injury to Netscape's business and property, as set forth above. Netscape's injury is of the type the antitrust laws are intended to prohibit and thus constitutes antitrust injury. Unless the activities complained of are enjoined, Netscape will suffer immediate and irreparable injury for which Netscape is without an adequate remedy at law.

### **Count Seven**

#### **Tortious Interference**

56. Plaintiff incorporates and restates the allegations in paragraphs 1 through 55 above.

57. Microsoft's conduct as alleged herein gives rise to common law liability for intentional interference with contractual relations and intentional interference with prospective economic advantage and/or prospective contractual or business relations.

58. At all relevant times, Netscape had valid contractual relationships or legitimate expectations of legally enforceable contractual or economic relationships with third parties.

59. The foregoing relationships would have provided economic and other benefits to Netscape but for Microsoft's tortious and anticompetitive conduct.

60. At all relevant times, Microsoft knew of Netscape's valid and legally enforceable contractual and prospective contractual and economic relationships with third parties.

61. Microsoft willfully engaged in the foregoing acts and practices with the intent to induce breach or disruption of Netscape's existing and prospective contractual and economic relationships with third parties.

62. Microsoft's deliberate and primary purpose in engaging in some, if not all, of the foregoing acts and practices was to disrupt Netscape's prospective contractual and economic relationships with third parties.

63. The foregoing acts and practices, and Microsoft's continuing course of anticompetitive and tortious conduct, were and are wrongful for reasons in addition to their impact on Netscape's business and prospects for economic advantage and development.

64. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive and tortious conduct, deliberately and directly resulted in actual breaches or disruptions of Netscape's existing and prospective contractual and business relations with third parties.

65. The foregoing acts and practices, and the continuing course of Microsoft's anticompetitive and tortious conduct, directly and proximately caused Netscape to suffer injury and damages to its business and property, as set forth above.

66. Microsoft committed these tortious acts with deliberate and actual malice, ill-will, and specific knowledge that its actions constituted an outrageous, willful and wanton disregard of Netscape's legal rights.

### **Relief Requested**

WHEREFORE, plaintiff asks for the following relief: (a) injunctive relief sufficient to prevent further antitrust injury to Netscape and to restore competition lost in the market for Web browsers, and to enable middleware platforms to compete with Intel-compatible PC operating systems; (b) an award to plaintiff of its actual damages in an amount to be determined at trial, trebled pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15 and District of Columbia Code § 28-4508(a)(1), along with interest on such damages; (c) an award to plaintiff of its costs, including reasonable attorney's fees, as provided in Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 and District of Columbia Code § 28-4508(a)(2); (d) with respect to Count VII, an award of punitive damages sufficient to punish and deter Microsoft from repeating its unlawful conduct in the future; and (e) such further relief as the Court may deem just and equitable.

Respectfully submitted,

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