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DEPARTMENT 212

7 Attorneys for Plaintiffs
GO COMPUTER, INC. and S. JERROLD KAPLAN

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO

12
13 GO COMPUTER, INC., a Washington
14 corporation; S. JERROLD KAPLAN, an
individual,

15 Plaintiffs,

16 v.

17 MICROSOFT CORPORATION, a Washington
18 corporation,

19 Defendants.

Case No. **CBC-05-442684**

**COMPLAINT FOR VIOLATIONS OF THE
CARTWRIGHT ACT, BUS. & PROF. CODE
§§ 16720 et seq.**

[JURY TRIAL DEMANDED]

20 Plaintiffs GO COMPUTER, INC. and S. JERROLD KAPLAN, complain of defendant
21 Microsoft Corporation ("Microsoft") as follows:

22 **NATURE OF ACTION**

23 1. GO Computer, Inc. and S. JERROLD KAPLAN bring this action to recover the
24 damages they sustained as a result of Microsoft Corporation's collusive and exclusionary actions in
25 violation of the Cartwright Act (California Bus. & Prof. Code §§ 16720 et seq.).

26 **JURISDICTION AND VENUE**

27 2. This Court has jurisdiction pursuant to California's antitrust law, the Cartwright Act
28 (California Business and Professions Code §§ 16720 et seq.). This Court has jurisdiction over

1 Microsoft because Microsoft is authorized to and does conduct business throughout California.

2 3. Venue is proper in the City and County of San Francisco pursuant to California
3 Business and Professions Code § 16750 and California Code of Civil Procedure § 395.5 as the
4 unlawful acts, obligations and liability that plaintiffs allege occurred and arose in part therein.

5 Microsoft does business in, is found in, and received substantial revenues and profits from sales of its
6 products in the City and County of San Francisco. Its liability thus arose in part therein.

7 **PARTIES**

8 4. GO Computer, Inc. is a corporation organized and existing under the laws of the State
9 of Washington, with its legal agent for service of process located at Unisearch, Inc., 1780 Barnes
10 Blvd. S.W., Bldg. G, Tumwater, WA 98512-0410. GO Computer, Inc. and S. Jerrold Kaplan are the
11 owners of all claims asserted herein as a result of a succession of assignments thereof from GO
12 Corporation to AT&T Co. ("AT&T"), from AT&T to Lucent Technologies, Inc., ("Lucent") and from
13 Lucent to GO Computer, Inc. and S. Jerrold Kaplan. GO Corporation was the original holder of the
14 claims asserted herein as it was the competitor of Microsoft that suffered the harm that resulted from
15 Microsoft's unlawful actions set forth hereinbelow. GO Corporation's claims were assigned to AT&T
16 in January 1994, when GO Corporation was merged into AT&T's subsidiary, EO Corp. GO
17 Corporation's claims were then assigned by AT&T to Lucent in April 1996 when AT&T spun off all
18 of its GO Corporation assets, including the claims asserted herein. Lucent assigned all of GO
19 Corporation's claims herein to GO Computer, Inc. and S. Jerrold Kaplan on April 14, 2005. Unless
20 otherwise indicated, all references to GO hereinbelow are to GO Corporation.

21 5. S. Jerrold Kaplan is a founder and CEO of GO, principal inventor of GO's patented
22 technology and is a resident of Hillsborough, California.

23 6. Defendant Microsoft Corporation is a corporation organized and existing under the
24 laws of the State of Washington, with its principal place of business located at One Microsoft Way,
25 Redmond, Washington. At all relevant times Microsoft has sold and licensed and continues to sell and
26 license Intel-compatible operating system and applications software. Microsoft is the world's largest
27 supplier of computer software for personal computers ("PCs") and servers, which it supplies largely
28 through sellers of computers and independent distributors. Throughout the relevant period, Microsoft

1 has marketed its computer operating system software in California and elsewhere and has licensed it
2 to sellers of computers as well as software distributors, resellers and end users in California and
3 elsewhere.

4 7. For purposes of this action, the relevant market is the market for Intel-compatible PC
5 operating systems, which is the same relevant market that was alleged and established in *United States*
6 *v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999) and 87 F. Supp. 2d 30 (D.D.C. 2000) (hereinafter
7 "*United States v. Microsoft*"). At all times relevant to this action, Microsoft possessed monopoly
8 power, i.e., the power to raise prices and exclude competition in the relevant PC operating system
9 market, as was alleged and proven in *United States v. Microsoft*. By 1990, Microsoft's share of the
10 relevant market was 65%. (See Govt. 1st Am. Compl. ¶ 25 [hereinafter "Govt. Compl."])

11 8. "In the succeeding years" (i.e., 1990-1995), Microsoft "eliminated all competition" in
12 the relevant market (Govt. Compl. ¶ 26) through a pervasive and protracted campaign of collusive and
13 exclusionary practices designed to eliminate all threats to its operating system monopoly. Companies
14 that Microsoft considered direct competitive threats to its monopoly were any that had developed a PC
15 operating system or had developed cross-platform "middleware" that had the potential of reducing the
16 entry barriers that protected Microsoft's operating system monopoly. Examples included: Netscape,
17 Sun Microsystems ("Sun"), Real Networks, Novell and – for purposes of this action – GO.

18 9. The actions Microsoft took to eliminate the competitive threats to its operating system
19 monopoly posed by Netscape and Sun were alleged by the Government and adjudged unlawful by the
20 Court in *United States v. Microsoft*. Microsoft took similar actions to eliminate GO from the PC
21 operating system market and for the same purpose: Microsoft acknowledged that GO had developed
22 its own PC operating system for "pen computers" (as defined below), that GO's PC operating system
23 was in many ways superior to Microsoft's operating system and that GO had to be eliminated so as to
24 enable Microsoft to preserve its operating system monopoly – which it was then able to deploy against
25 Netscape and Sun as alleged and found in *United States v. Microsoft*.

26 **GO'S ATTEMPT TO ENTER THE RELEVANT PC OPERATING SYSTEM MARKET**

27 10. GO was founded in 1987 to invent and develop a new type of personal computer
28 known as a "pen" or "tablet" computer that was used by writing directly onto a flat screen with a

1 special pen rather than by typing on a keyboard. GO's product initially consisted of two components:
2 (1) a thin lightweight computer similar to a notebook or pad of paper that could be held in one hand
3 while writing on it with the other and (2) an operating system called "PenPoint" designed to support
4 special application programs that would make this new type of PC easy to use. In order to establish
5 PenPoint in the market, it was necessary to convince other software developers to invest their
6 resources in writing new applications designed for pen computing and to run using PenPoint, so GO
7 contacted all the major PC application software developers for that purpose. One of the application
8 software developers GO contacted was Microsoft.

9 MICROSOFT'S RESPONSE TO GO'S MARKET ENTRY

10 11. As the internal records of Microsoft later revealed, Microsoft had no interest
11 whatsoever in writing applications for GO's operating system for use with pen computers. To the
12 contrary, Microsoft saw GO's PC operating system as a serious threat to its operating system
13 monopoly and took swift covert action to "kill" it just as it did the Netscape/Sun Java threat to its
14 monopoly. Microsoft considered its prime objective was to continue to be the dominant mainstream
15 PC operating system standard. Microsoft's CEO, William H. Gates III ("Gates"), personally saw GO
16 as a direct competitive threat to Microsoft's operating system monopoly, stating that "GO's primary
17 strategy is to create an operating system standard that is different than and incompatible with
18 Microsoft's (PX319)¹; that "there was an operating system conflict between GO and Microsoft"
19 (PX310); and that "GO is a Windows competitor" (PX310). Microsoft's other top executives agreed
20 with Gates, stating GO "competes with our OSs" (PX310). Gates therefore assigned Marlin Eller (a
21 senior developer in the Operating Systems Division of Microsoft during 1982-1995), among others,
22 responsibility of extinguishing the GO threat. Eller explained: "Everyone knew that [Microsoft's]
23 bread and butter came from DOS, and, eventually, they would realize it [came] from Windows. The
24 abiding rule was to kill anyone trying to take that revenue away. The number one mission of
25 Microsoft was to not let anyone else poach on its core asset – the operating systems business. And
26 GO was looking like a serious threat." Jennifer Edstrom and Marlin Eller, *Barbarians Led by Bill*

27 _____
28 ¹ Documents referenced as "PX" are trial exhibits admitted in evidence during trial in *Gordon v. Microsoft*, Case No. 00-005994 (MN Dist. Ct., Hennepin Cty.).

1 *Gates* at 120 (1998).

2 12. Microsoft undertook to “kill” GO by resorting to many of the same collusive and
3 exclusionary tactics Microsoft used against Netscape, Sun, Novell, original equipment manufacturers
4 (“OEMs”), independent software vendors (“ISVs”) and others that were alleged by the Government
5 and adjudged unlawful by the Court in *United States v. Microsoft* – and for the same purpose: GO’s
6 operating system was a serious competitive threat to Microsoft’s operating system monopoly.
7 Microsoft began its mission in July 1988, when Gates showed up at GO’s offices in Palo Alto,
8 California, ostensibly in response to GO’s invitation to Microsoft and all other major PC applications
9 developers to write applications for GO’s PC operating system for use with tablet computers,
10 referenced in paragraph 10 above.

11 13. Gates expressed considerable interest to GO’s management in exploring the prospect of
12 having Microsoft develop applications for PenPoint, as Microsoft had done in the past for the Apple
13 MacIntosh. He therefore executed a Nondisclosure Agreement (“NDA”) and assigned a senior
14 executive (Jeff Raikes, Vice President of Applications) to work with GO. In February 1989, Raikes
15 signed a Joint Development Agreement with GO by which Microsoft was to devote resources to the
16 joint effort and GO was to provide confidential engineering designs, access to GO’s engineering staff
17 and space in GO’s office in which to work. The information was to be kept confidential, to be used
18 “only for the purpose of furthering this joint project,” and no copies were to be made or disseminated
19 without GO’s permission. (PX58) GO also relied upon Microsoft’s well known public statements to
20 the software industry that it maintained a veritable “Chinese Wall” between its Applications and
21 Operating System Divisions that would prevent GO’s valuable trade secrets, entrusted to Microsoft’s
22 Applications Division (which Raikes headed), from being diverted to Microsoft’s Operating System
23 Division for use in competition against GO. Raikes sent an engineer (Lloyd Frink, ostensibly from
24 Microsoft’s Applications Division) to visit GO on several occasions over the ensuing months, during
25 which he was given extensive access to confidential documentation, engineers, prototypes and other
26 valuable proprietary resources.

27 14. GO provided its proprietary trade secrets to Microsoft in reliance upon Microsoft’s
28 agreement not to disseminate or use them except for its possible development of applications for GO’s

1 pen computer operating system in cooperation with GO. But that was not Microsoft's real purpose.
2 Lloyd Frink reported to Gates that his real "[p]urpose of [the] trip" to GO's offices was "for me to
3 learn in more detail [about] what GO is developing. . . . We can take this information into
4 consideration when putting Windows on similar types of machines." (PX115) Frink also told Gates:
5 "[t]he one key piece we need in order to put Windows on [tablet] computers made by other
6 manufacturers is the handwriting recognition software. The GO people wouldn't let me get near any
7 of their stuff (with good reason)." (PX115)

8 15. Undaunted, however, Frink continued to purloin valuable engineering designs from
9 GO, then reported to Gates and other Microsoft top executives on his success: "Attached is a packet
10 of information I have collected on GO. These are some of GO's very preliminary specs."
11 Acknowledging that GO's technology "has a lot of appeal," Frink assured Gates *et al.* "I think we can
12 whip something up in a year that embodies some of these [i.e., GO's] ideas." (PX355) Microsoft not
13 only stole GO's valuable trade secrets directly from GO (i.e., by entering GO's premises and poring
14 over GO's confidential records pursuant to an NDA that Microsoft honored only in its breach), but it
15 also got other developers to disclose trade secret information they obtained from GO under NDAs
16 they had signed with GO. Thus, in a report to Raikes, a Microsoft employee confided that Softview,
17 Inc. (an ISV beholden to Microsoft) "is quite eager to give us info [information] on GO," that it "has
18 access to technical documentation and will get more detailed information" (obtained from GO under
19 an NDA) and is "open to giving us info [information] on GO" in direct violation of its NDA. (PX370)
20 The report to Raikes then described GO's proprietary information in detail and promised even more
21 such information will be sent to Microsoft, adding: "Given that further information is probably more
22 technical, I think one of the [Microsoft] development team[s] should be here" to interpret it. (PX370)

23 16. While purloining technical information about GO's proprietary technology, Microsoft
24 also secretly "blacklisted" GO from receiving Microsoft's "beta releases" of software required to
25 properly integrate PenPoint with Microsoft's dominant software products – "beta releases" that
26 Microsoft routinely made available to developers who did not seek to compete with Microsoft's
27 operating system. Microsoft also withheld technical information from GO that would enable GO's
28 software to remain interoperable with Microsoft's – information generally provided to third party

1 developers – unless GO would release Microsoft of any claims based upon Microsoft’s previous
2 exposure to GO’s proprietary technology. Microsoft’s practice of “withholding crucial technical
3 information” was also found to be exclusionary by the Court in *United States v. Microsoft* (FF90 *et*
4 *seq.*, 84 F. Supp. 2d at 33) and was the subject of the Court’s recently affirmed injunction against
5 Microsoft. *See* 373 F.3d 1199 (D.C. Cir. 2004).

6 17. GO unveiled PenPoint publicly for the first time to an “invitation only” audience of
7 software developers in San Francisco in early 1991 and the next day to the Boston Computer Society
8 in Boston. Microsoft had one of its developers gain access to the GO demonstration in Boston so that
9 he could secretly videotape it for Microsoft executives to view back in Redmond, Washington in
10 search of other features to copy. The GO demonstrations were a major success, resulting in glowing
11 press reviews and industry magazines’ praise. It quickly became apparent to Microsoft that, despite
12 its best efforts to misappropriate GO’s valuable technology so that it could replicate it in a Windows-
13 based computer (later to be known as PenWindows or WinPad), GO’s pen computer operating system
14 was far superior to the Windows operating system that Microsoft used for its pen computer. One of
15 Microsoft’s software engineers responsible for PenWindows concluded that “GO has a technically
16 superior solution” whereas “Windows is too complex and inappropriate for [pen computers].”

17 (PX859)

18 18. Recognizing that Microsoft could not replicate the quality of GO’s pen computer on its
19 Windows operating system, even with information stolen from GO, Microsoft resorted to other
20 exclusionary measures – all of which are similar to the exclusionary tactics which the Government
21 alleged and the Court declared unlawful in *United States v. Microsoft*. While Microsoft was gathering
22 confidential information from GO under the false pretense that it planned to develop applications for
23 GO’s pen operating system, Gates learned that Intel planned to invest several million dollars in GO’s
24 development efforts and to provide a public endorsement of GO. That endorsement and support
25 would have virtually guaranteed GO’s success. Intel wanted to support GO for two reasons: first,
26 Intel believed GO’s operating system was superior to Microsoft’s operating system and, second, Intel
27 wanted to encourage GO to develop another operating system so that Intel would not have to be
28 dependent on the Microsoft operating system monopoly anymore.

1 19. As soon as Gates learned that Intel was planning to endorse and support GO, he
2 dispatched his subordinates to meet with Intel to tell Intel not to endorse or support GO. Microsoft
3 executives repeatedly told Intel that its public endorsement and financial support of GO “is an anti-
4 Microsoft move because it [GO’s operating system] competes with our OSs [operating systems].”
5 (PX310) Gates himself reported that he told Intel management “there was an operating system
6 conflict between GO and Microsoft” (PX310) and that Intel therefore should not help GO. In an effort
7 to dissuade Intel from helping GO, Microsoft even showed Intel a prototype of Microsoft’s
8 PenWindows that was implemented by Frink based on what he had secretly taken from GO. Intel
9 resisted, telling Microsoft that Intel was “very impressed with GO’s software and with GO in
10 general,” (PX310) whereas the Windows operating system was “too complicated.” (PX310) Given
11 that Intel continued to resist Microsoft’s pressure, Gates finally wrote Intel’s CEO (Andrew Grove)
12 directly to insist that Intel not support GO:

13 GO’s primary strategy is to create an operating system standard that is
14 different and incompatible with Microsoft’s. . . . An Intel investment in
15 GO would send a strong message to both OEMs and ISVs. . . . Intel’s
16 investment in GO will be seen as an endorsement of GO’s platform and
17 system software. This will be a very powerful effect which you should
18 not discount – in fact it is almost certainly a stronger effect than the
19 value of the actual money that GO receives. . . . I guess I’ve made it
20 very clear that we view an Intel investment in GO as an anti-Microsoft
21 move, both because GO competes with our systems software and
22 because we think it will weaken the 386 PC standard. . . . I’m asking
23 you not to make any investment in GO Corporation.

19 (PX319)

20 20. As a result of Microsoft’s pressure, Intel substantially reduced its investment in GO
21 and, more importantly – because Gates convinced Grove that any investment in GO “will be seen as
22 an endorsement of GO’s platform and system software” and would “almost certainly [have] a stronger
23 effect than the value of the actual money that GO receives” – also prohibited GO from publicly
24 disclosing the fact that Intel had made any investment in GO. Microsoft’s pressures on Intel to
25 withhold its endorsement of GO are similar to the pressures it exerted on Intel and others to refrain
26 from dealing with its competitors, as the Government alleged and the Court found unlawful in *United*
27 *States v. Microsoft*. It was “Microsoft’s corporate practice to pressure other firms to halt software
28 development that either shows the potential to weaken the applications barrier to entry or competes

1 directly with Microsoft's most cherished software products." (FF93, 84 F. Supp. 2d at 34) In
2 particular, "Microsoft successfully pressured Intel, which was dependent in many ways on Microsoft's
3 good graces, to abstain from aiding in Sun's and Netscape's Java development work" (87 F. Supp. 2d
4 at 43). The Court found that "Microsoft's interactions with Netscape, Intel, Apple and Real Networks
5 all reveal Microsoft's business strategy of directing its monopoly power toward inducing other
6 companies to abandon projects that threaten Microsoft and toward punishing those companies that
7 resist." (FF132, 84 F. Supp. 2d at 43) GO was a direct target of that business strategy because GO's
8 operating system directly threatened to erode Microsoft operating system monopoly.

9 21. Intel, Apple, Netscape and Real Networks were not the only developers who, the Court
10 found, were pressured by Microsoft to abstain from helping Microsoft's rivals erode its operating
11 system monopoly. Microsoft also "targeted individual ISVs, directly extracting from them
12 commitments" to write applications for Microsoft exclusively (FF337, 84 F. Supp. 2d at 93).
13 "Microsoft's exclusive deals with the ISVs," the Government claimed and the Court found, "had a
14 substantial effect in further foreclosing rival browsers from the market" (253 F.3d at 72). GO was the
15 brunt of this exclusionary tactic as well. Determined to "stop GO," Microsoft strategized that it could
16 do this by "making sure they sign up no OEMs or ISVs, hence have no customers." (PX443)
17 Microsoft did this by launching a project that was expressly designed to destroy GO by locking up
18 almost 500 ISVs to work exclusively on Microsoft's pen computer so as to make certain GO had no
19 ISVs to write applications for GO's pen computer – leaving GO with "no customers."

20 22. Coercive strategies employed by Microsoft to foreclose rivals from access to the OEM
21 distribution channel, alleged by the Government and found unlawful by the Court in *United States v.*
22 *Microsoft*, were also employed against GO with extraordinary success. The Government alleged:

23 In the succeeding years [i.e., from 1990 to 1995], Microsoft effectively eliminated
24 all competition in the operating system . . . markets. It used, *inter alia*, its market
25 power in the operating system [market] to pressure OEMs into agreeing to
26 restrictive licensing terms for MS-DOS. These terms included "per processor"
27 operating system licenses, which required OEMs to pay Microsoft an operating
28 system royalty for every computer they sold, regardless of whether the computer
included Windows/MS-DOS, thus discouraging sale of non-Microsoft GUIs and
operating systems. These licenses also included other restrictions, such as tying
Windows and DOS through licensing agreements, large minimum commitments
and long license terms.

1 (Govt. Compl. ¶ 26) Microsoft’s “restrictive dealing agreements with OEMs,” the Government
2 alleged and the Court found (Govt. Compl. ¶ 48), “prevented, or significantly handicapped, the
3 licensing, sale, distribution and promotion of technologies competing with Microsoft’s” (*ibid.*) and
4 were a major cause of GO’s ultimate expulsion from the PC operating system market. While the
5 Government “obtained a consent decree enjoining certain . . . practices” (Govt. Compl. ¶ 26), it
6 alleged that “by the time of the consent decree [entered in August 1995], the damage had already been
7 done.” (Govt. Compl. ¶ 27; *see also* ¶¶ 54-69 [“Foreclosure Of The OEM Channel”; FF144, 84 F.
8 Supp. 2d at 46-47])

9 23. As the Government alleged and the Court found in *United States v. Microsoft*,
10 Microsoft “used incentives and threats in an effort to secure the cooperation of individual OEMs” in
11 helping Microsoft preserve its operating system monopoly. (FF230 *et seq.*, 84 F. Supp. 2d at 67)
12 Microsoft employed those same “incentives and threats” which the Government alleged and the Court
13 found to block GO from distributing its rival operating system for pen computers through the OEMs.
14 Gates was assured by his subordinates that “[o]ur primary mission right now is to stop GO” and that
15 “[w]e could do this” by “making sure they sign up no OEMs” and thus “have no customers.” (PX443)

16 24. Microsoft’s use of “incentives and threats” (FF230, 84 F. Supp. 2d at 67) to coerce
17 Compaq, Fujitsu, Toshiba and other OEMs into contracts that prohibited them from making pen
18 computers using GO’s operating system epitomizes the collusive and exclusionary strategy which the
19 Government alleged and the Court found (and finally enjoined). For example: by late 1992, Compaq
20 – then the leading PC manufacturer – decided to expand into the emerging PDA market. “PDA” (or
21 personal digital assistant) was the acronym used then for handheld portable computers, mainly pen
22 computers. The ubiquitous PDAs of today – Palm, Handspring, Microsoft “Tablet” – are the
23 conceptual descendants of GO’s pioneering technology of a decade earlier. During 1992-1993, GO
24 and Microsoft were competing head to head for Compaq’s PDA operating system business. Compaq
25 assembled a team of software engineers to conduct a complete technical analysis of both GO’s and
26 Microsoft’s pen computer operating systems. The results were unequivocal: “GO offers Compaq the
27 best opportunity to dominate the PDA market. . . . The potential for Compaq . . . with GO far exceeds
28 opportunities with Microsoft. . . . PDAs [using GO’s operating system] represent the most attractive

1 opportunity . . . [to] break-out of the Microsoft architectural prison. . . . GO solution appears to better
2 meet user needs as we can see them.” (PX1522) Conclusion: “Choice: GO’s PenPoint.”

3 25. GO thus won on the competitive merits but lost to Microsoft’s strategy of “incentives
4 and threats,” which the Court found and ultimately enjoined – in *United States v. Microsoft* (FF230,
5 84 F. Supp. 2d at 67). Compaq’s top management overruled its engineering team’s recommendation
6 of GO, listing as reasons: “What is at risk? What really are the risks of using alternative operating
7 systems in part of our business? . . . Microsoft does not really want us developing software. . . . How
8 can Microsoft negatively impact our core business?” (PX1521) It could “sabotage our efforts.
9 . . . Microsoft would withhold Chicago [WIN 95] information and SDK. . . . How retaliatory would
10 they get? [Listing 12 actions Microsoft might take to harm Compaq.]” (PX1521) “Attempts by
11 Microsoft to sabotage Compaq/GO integration to the desktop is likely.” (PX1522) A senior Compaq
12 executive briefed the CEO in advance of an upcoming personal visit by Gates as to “the effect of a
13 non-Microsoft decision [i.e., working with GO] on the rest of our business.” (PX1519) He
14 recommended against GO because “[i]f we . . . enter into an agreement with GO, Inc., we might stress
15 the Microsoft relationship to the breaking point.” (PX1519) Those were the “threats” of the
16 “incentives and threats” which the Government alleged and the Court found Microsoft used to bar
17 operating system competitors from the OEM channel. (FF230, 84 F. Supp. 2d at 67) The
18 “incentives”: The very next day, in preparation for Gates’ personal visit to Compaq, Microsoft’s
19 Vice-President of OEM Sales, Joachim Kempin instructed Compaq’s CEO to be prepared to
20 “[d]iscuss the WinPad [PenWindows] project and outline the significance of our proposed exclusivity
21 and sustained market advantages to Compaq.” (PX1520) After the Microsoft/Compaq meeting,
22 Compaq cryptically informed GO that Compaq would not be using GO’s operating system even
23 though it prevailed on the merits. Microsoft and Compaq later publicly announced a “Strategic
24 Relationship” that included Microsoft’s inferior WinPad operating system on an exclusive basis.

25 26. Microsoft used similar coercive tactics to prohibit Fujitsu, Toshiba and other OEMs
26 from using GO’s superior operating system for pen computers. Microsoft’s Jeff Raikes instructed his
27 subordinates to “show no mercy” toward Fujitsu if Fujitsu supported GO’s operating system, referring
28 to Microsoft’s threat to withhold monies due Fujitsu for overpayments made by it for its Windows

1 license. Fujitsu was thus forced to forego a superior open computer operating system. Microsoft's
2 exclusion of GO's operating system from the OEM channel was so effective that GO was forced to
3 develop a means to port its operating system to a non-Intel processor, outside the market that
4 Microsoft had monopolized. That alternative was the "Hobbit" processor chip that AT&T had
5 developed as a low cost and low power alternative to the Intel processor that Microsoft used.

6 27. With backing and support from AT&T, GO shifted its focus and resources to the
7 development of its PenPoint operating system based on the Hobbit chip, resulting in two highly
8 acclaimed pen computer products – EO440 and EO880. Those products demonstrated how much
9 better GO's pen computers were than Microsoft's Windows-based pen computers. In response,
10 Microsoft continued to exert pressure on Toshiba and other OEMs to agree not to manufacture pen
11 computers for GO – even though GO was no longer able to use the Intel microprocessor that
12 Microsoft used as a result of Microsoft's previous blockade of the OEM channel from GO.

13 28. Seeing that GO was unable to gain a foothold in the Intel-compatible operating system
14 market and was financially constrained from circumventing Microsoft's barriers, AT&T acquired GO
15 in a non-cash merger for stock in its subsidiary (EO Corp.) in January 1994. However, because
16 Microsoft had already closed the OEM channel to any operating system competitor (whether it used
17 the Intel chip or the Hobbit chip), AT&T was forced to shut down EO Corp. (and thus GO) in July
18 1994. In November 1994, barely six months after GO was shut down, Microsoft quietly withdrew
19 PenWindows from the market before even shipping the final version. Microsoft accomplished its
20 goal. Microsoft's pen computer software engineer (Marlin Eller) explained:

21 [PenWindows] wasn't a thing about making money. This was all about
22 'Block that kick.' . . . We were preventing GO from running away with
23 the market. That was our job. . . . We weren't trying to sell software, we
24 were trying to prevent other people from selling software. From my
view, PenWindows was a winner. We shut down GO. . . . That
company is dead. They won't sell their [expletive deleted] anymore.
We did our job.

25 Jennifer Edstrom and Marlin Eller, *Barbarians Led by Bill Gates* at p. 144 (1998).

26 **MICROSOFT'S HARM TO COMPETITION, TO CONSUMERS AND TO GO**

27 29. Microsoft's exclusionary combinations and other exclusionary acts in furtherance
28 thereof have caused substantial harm to competition in the relevant PC operating system market,

1 enabling Microsoft to strengthen and preserve the monopoly it had unlawfully acquired by 1995. Its
2 conduct has suppressed innovation and extinguished competition by foreclosing competitors from the
3 resources and outlets they needed to compete and it has denied consumers the benefit of new
4 technologies by preventing those new technologies from competing with Microsoft's inferior products
5 on the merits.

6 30. Through its unlawful conduct, Microsoft has also destroyed GO. But for Microsoft's
7 violations, GO would have acquired a going concern value of more than \$200 million by the date of
8 its demise in July of 1994 and a much higher going concern value by the time of trial.

9 **THE STATUTE OF LIMITATIONS REMAINS TOLLED BY MICROSOFT'S ONGOING**
10 **UNLAWFUL CONDUCT**

11 31. Microsoft's exclusionary combinations and other exclusionary acts in furtherance
12 thereof, as well as their harmful effects on competition and consumers, have been perpetrated by
13 Microsoft on a continual basis from the late 1980s to the present. The statute of limitations therefore
14 has not yet begun to run on any of GO's claims. Moreover, GO's discovery of Microsoft's
15 exclusionary combinations and covert acts in furtherance thereof was delayed by Microsoft's
16 fraudulent concealment and affirmative denials of its unlawful conduct to the present day. GO could
17 not, in the exercise of reasonable diligence, have discovered Microsoft's fraudulently concealed
18 violations alleged herein any earlier than it did. Consequently, the statute of limitations was tolled as
19 to Microsoft's fraudulently concealed violations until GO could be reasonably deemed to have
20 discovered them shortly before commencing this action.

21 **FIRST CAUSE OF ACTION:**
22 **COMBINATIONS IN RESTRAINT OF TRADE**
[Violation of Bus. & Prof. Code §§ 16720 *et seq.*]

23 32. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1-31
24 above.

25 33. Microsoft's conduct alleged herein constituted numerous combinations in restraint of
26 trade in violation of the Cartwright Act (Bus. & Prof. Code §§ 16720 *et seq.*), resulting in substantial
27 harm to GO's business and property.

28 //

SECOND CAUSE OF ACTION:
COMBINATIONS TO MONOPOLIZE THE RELEVANT MARKET
[Violation of Bus. & Prof. Code §§ 16720 *et seq.*]

34. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1- 31 above.

35. Microsoft’s conduct alleged herein constituted numerous combinations to monopolize the relevant PC operating system market and numerous acts in furtherance of those combinations in violation of the Cartwright Act (Bus. & Prof. Code §§ 16720 *et seq.*), resulting in substantial harm to GO’s business and property.

PRAYER

WHEREFORE, plaintiffs pray for judgment and relief against Microsoft as follows:

A. Actual and treble damages pursuant to § 16750 of the California Business & Professions Code;

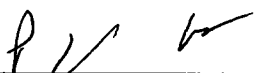
B. Reasonable attorneys’ fees pursuant to § 16750 of the California Business & Professions Code;

C. Interest as provided by law;

D. Such other relief as the Court may deem appropriate.

Dated: June 28, 2005

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL P.L.L.C.

By: 

David L. Schwarz (Cal. State Bar No. 206257)
Priya R. Aiyar (Cal. State Bar No. 218877)
Jamil N. Jaffer (Cal. State Bar No. 230109)

*Attorneys for Plaintiffs GO Computer, Inc. and S.
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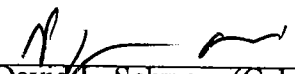
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on the issues raised by this Complaint.

Dated: June 28, 2005

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL P.L.L.C.

By: 
David L. Schwarz (Cal. State Bar No. 206257)
Priya R. Aiyar (Cal. State Bar No. 218877)
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