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7 (Fee Exempt, Gov. Code, § 6103)

8
9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11
12 CALIFORNIA CIVIL RIGHTS
DEPARTMENT, an agency of the State of
13 California,
14
Plaintiff,
15 v.
16 MICROSOFT CORPORATION,
17 Defendant.

Case No. 24CV442210
Dept:
Hon.

**CIVIL RIGHTS COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

JURY TRIAL DEMANDED

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1 **INTRODUCTION**

2 1. Plaintiff California Civil Rights Department (“CRD”),¹ an agency of the State of
3 California, brings this action in its own name against Defendant Microsoft Corporation (“Microsoft”) to
4 remedy violations of the California Fair Employment and Housing Act (“FEHA”), Government Code
5 section 12900 *et seq.*; the California Family Rights Act (“CFRA”), Government Code, § 12945.1 *et seq.*;
6 the California Pregnancy Disability Leave Law (“PDLL”), Government Code, § 12954; Title VII of the
7 1964 Civil Rights Act (“Title VII”), 42 U.S.C. § 2000e *et seq.*; and the Americans with Disabilities Act
8 (“ADA”), 42 U.S.C. § 12101 *et seq.*

9 2. Microsoft is a global corporation that provides software and hardware services
10 headquartered in Seattle, Washington. Microsoft has approximately 221,000 employees worldwide, with
11 approximately 6,700 employees in California.

12 3. Microsoft’s compensation policies and practices have the effect of disadvantaging
13 workers who take employment leave that is protected under California and federal law—including but
14 not limited to disability, pregnancy parental, and other family caretaking leave. Because Microsoft
15 workers who use or will use protected leave are disproportionately women and people with disabilities,
16 Microsoft’s challenged policies and practices also have a discriminatory adverse impact based on sex
17 and disability that Microsoft cannot justify based on business necessity.

18 4. CRD therefore brings this action to obtain relief in the public interest and for a group of
19 Microsoft workers in California who used or will use protected leave between May 13, 2017, and the
20 present. Pursuant to CRD’s statutory authority to enforce FEHA, CFRA, the PDLL, Title VII, and the
21 ADA, CRD seeks to remedy, prevent, and deter discrimination based on sex and disability, the exercise
22 of rights protected by these laws, and retaliation.

23 **PARTIES**

24 5. Plaintiff CRD is a state agency tasked with investigating and prosecuting civil rights
25 actions. (Gov. Code, § 12930, subd. (f)(1)-(5)). Government Code section 12930 confers on CRD
26 authority to bring litigation on behalf of itself in the public interest pursuant to the prohibitions on
27

28 ¹ CRD was formerly named the California Department of Fair Employment and Housing (or “DFEH”) and is referred to as such in record documents and case law dated earlier than July 1, 2022.

1 employment discrimination under FEHA, CFRA, the PDLL, Title VII, and the ADA. (*Id.*, § 12930, subd.
2 (h).)

3 6. California’s legislature exercised its police power in enacting FEHA and investing
4 authority in CRD “to protect and safeguard the right and opportunity of all persons to seek, obtain, and
5 hold employment without discrimination . . .” (*Id.*, § 12920; see also *Dept. Fair Empl. & Hous. v. Cathy’s*
6 *Creations, Inc.* (2020) 54 Cal.App.5th 404, 410 [“CRD’s task is to represent the interests of the state and
7 to effectuate the declared public policy of the state to protect and safeguard the rights and opportunities
8 of all persons from unlawful discrimination.”].) In furtherance of these goals, CRD has authority to
9 initiate, conciliate, and prosecute complaints on behalf of itself in the public interest and persons alleged
10 to be aggrieved by discriminatory employment practices. (Gov. Code, §§ 12930, 12965). When a
11 challenged practice harms a group or class of people in a similar manner, CRD’s director has discretion
12 to determine that CRD may investigate, conciliate, and, if necessary, prosecute the matter as a civil action
13 on behalf of the group or class. (*Id.*, §§ 12961, subd. (b)(2); 12965, subd. (a).)

14 7. Defendant Microsoft is now and was, at all times relevant to this complaint, a corporation
15 formed under the laws of the State of Washington, headquartered in Redmond, Washington. It maintains
16 places of business in the State of California, including in Santa Clara County. At all times relevant to this
17 complaint, Microsoft has employed five or more people in California and is and has been an “employer”
18 subject to FEHA and all other applicable statutes.

19 **JURISDICTION AND VENUE**

20 8. This Court has jurisdiction under Article VI, section 10 of the California Constitution and
21 California Code of Civil Procedure section 410.10.

22 9. CRD’s Director, in their discretion, may file an administrative complaint on behalf of a
23 group or class. (Gov. Code, § 12961; Cal. Code Regs., tit. 2, § 10013.) Pursuant to this authority, on May
24 13, 2020, CRD’s Director filed and served on Microsoft a Notice of Group or Class Investigation (CRD
25 Case No. 201905-06046307), which was initiated by the prior filing of an individual administrative
26 complaint pursuant to Government Code section 12960, subdivision (c).

27 10. From May 13, 2020, through November 17, 2023, CRD conducted a group or class
28 investigation pursuant to Government Code sections 12961, subdivision (b)(1) and 12963 *et seq.*

1 11. At the conclusion of CRD’s investigation, the parties engaged in mediation with a
2 mediator.

3 12. All administrative procedures precedent to the initiation of this lawsuit in Government
4 Code sections 12963.7 and 12965, subdivision (a), have been fulfilled.

5 13. The amount of damages sought by this complaint exceeds the minimum jurisdictional
6 limits of this Court pursuant to Code of Civil Procedure section 116.221, subdivision (a).

7 14. The Court also has jurisdiction over this unlimited civil case because CRD seeks injunctive
8 and declaratory relief. (Civ. Proc. Code, §§ 86, subd. (a), 88.)

9 15. Pursuant to the parties’ tolling agreements, this Complaint is timely filed prior to the
10 expiration of the parties’ most recent and operative tolling agreement.

11 16. Venue is proper in Santa Clara County under Government Code section 12965, subdivision
12 (a)(4) because Microsoft maintains an office in this County. Government Code section 12965, subdivision
13 (a)(4) further establishes venue in any county in the State where, as here, CRD brings a civil action that
14 includes class or group allegations on behalf of CRD.

15 **GOVERNMENT ENFORCEMENT ACTION ALLEGATIONS**

16 17. Pursuant to Government Code sections 12961 and 12965, CRD brings this government
17 enforcement action on behalf of itself in the public interest and for the benefit of a group of Microsoft
18 workers in California who used or will use protected leaves of absence during or from their employment
19 with Microsoft between May 13, 2017, and the present (the “Group”). Within the Group is a subgroup of
20 women who work or worked for Microsoft in California and used or will use protected leave (“Women
21 Subgroup”) and a subgroup of workers with disabilities who work or worked for Microsoft in California
22 and used or will use protected disability leave (“Workers with Disabilities Subgroup”).

23 18. In bringing this litigation as a group or class action pursuant to Government Code sections
24 12961 and 12965, CRD seeks to remedy, prevent, and deter unlawful employment discrimination based
25 on the exercise of rights protected under FEHA, CFRA, the PDLL, Title VII, and the ADA.

26 19. CRD brings this representative enforcement action in its capacity as a state agency and the
27 authority vested in CRD by FEHA, which does not require class certification under Code of Civil
28 Procedure sections 378 and 382. Thus, CRD brings this government enforcement action on behalf of itself

1 and the Group.

2 20. Microsoft's challenged actions are ongoing and will continue to harm the Group unless
3 they are enjoined pursuant to the police power granted by Government Code sections 12920, 12920.5, and
4 12965, subdivision (c), from failing or refusing to comply with the mandates of the FEHA, CFRA, the
5 PDLL, Title VII, and the ADA. Without an injunction, the Group will continue to suffer harm from
6 Microsoft's ongoing challenged policies and practices.

7 21. As a result of Microsoft's challenged policies and practices, members of the Group have
8 suffered and continue to suffer economic injuries, including but not limited to lost earnings, lost benefits,
9 lost future employment opportunities, and other financial loss as well as non-economic damages.

10 22. By reason of the continuous nature of Microsoft's conduct, the continuing violations
11 doctrine is applicable to all violations alleged herein.

12 **FACTUAL ALLEGATIONS**

13 23. Workers at Microsoft in California suffer disadvantages, including in compensation and
14 promotion opportunities, when they use forms of employment leave that are protected under California
15 and federal law, including but not limited to parental, family caretaking, pregnancy, and disability leave.

16 24. Women and people with disabilities are over-represented among the group of Microsoft
17 workers who use protected forms of leave such as parental leave, family care-taking leave, pregnancy
18 leave, and disability leave.

19 25. Microsoft uses annual Rewards to recognize and reward worker contributions over the
20 course of a fiscal year.

21 26. Microsoft employees must meet certain requirements to be eligible for annual Rewards,
22 which include annual bonuses, annual stock awards, and merit increases.

23 27. Microsoft bases determinations of annual Rewards on a variety of factors, including a
24 worker's "impact," performance assessment, and other factors.

25 28. "Impact" is considered for each of the annual Reward types. Managers determine their
26 supervisees' "impact" based on a variety of considerations and metrics, including the employee's own
27 accomplishments, collaboration, and effect on other employees' performance. Metrics for "impact"
28 determinations include input from individual meetings, an online tool for worker self-reflection and

1 manager feedback, informal and formal feedback, and managers' observations.

2 29. Microsoft's policies and practices do not effectively prevent managers from considering a
3 worker's use of protected leave in determining "impact." Likewise, inadequate training and subjective
4 latitude in performance assessments fail to prevent managers from considering protected leave.

5 30. Annual bonus is determined based on a combination of a worker's "impact" and their
6 Bonus Eligible Salary ("BES"). BES is the total base pay that a worker accumulates in a fiscal year for
7 the time they are "actively working." Microsoft does not consider an employee to be actively working
8 while on protected leave. By contrast, Microsoft considers an employee to be "actively working"
9 when they are on other forms of leave.

10 31. Microsoft also considers "impact," along with other factors, in making decisions regarding
11 other types of annual Rewards, including stock awards and merit increases, as well as promotions. A
12 worker who has no Rewards or low "impact" is not eligible for a promotion in the subsequent fiscal year.

13 32. Managers have commented negatively on employees' use of protected leave. Combined
14 with the compensation and promotion disadvantages that inure to the detriment of workers who use
15 protected leave, Microsoft's workplace culture discourages employees from using protected leave.

16 33. By virtue of policies and practices that disadvantage workers who used protected forms of
17 leave, Microsoft has denied reasonable accommodations to Group members who have used or requested
18 to use protected leave as an accommodation for a disability.

19 34. Microsoft workers who take protected leave have reported concerns with retaliation after
20 requesting or taking protected leave.

21 **FIRST CAUSE OF ACTION – CFRA**
22 **Discrimination Based on the Exercise of Rights under CFRA**
23 **Gov. Code, § 12945.2, subd. (k)**
On Behalf of the Group

24 35. CRD incorporates and realleges all previous allegations as if fully set forth herein.

25 36. CFRA prohibits employers from discriminating against a person's "exercise of the right to
26 family care and medical leave . . ." (Gov. Code, § 12945.2, subd. (k)(1).)

27 37. Microsoft's challenged policies and practices have harmed and continue to harm members
28 of the Group by discriminating in compensation and promotion opportunities because Group members

1 used, or will in the future use, protected leave, an activity that is protected under CFRA.

2 38. Microsoft's challenged policies and practices therefore have discriminated against and
3 will continue to discriminate against members of the Group in violation of Government Code section
4 12945.2, subdivision (k)(1).

5 39. Plaintiff CRD requests relief as described herein.

6 **SECOND CAUSE OF ACTION – CFRA**
7 **Interference with the Exercise of Rights**
8 **Gov. Code, § 12945.2, subd. (q)**
9 **On Behalf of the Group**

10 40. CRD incorporates and realleges all previous allegations as if fully set forth herein.

11 41. CFRA prohibits employers from interfering with a person's exercise of or attempt to
12 exercise rights provided under CFRA, including the right of an employee to take up to twelve weeks of
13 family care and medical leave in a twelve-month period. (Gov. Code, § 12945.2, subs. (a), (q).)

14 42. Microsoft's challenged policies and practices have harmed and continue to harm members
15 of the Group by discriminating in compensation and promotion opportunities because Group members
16 used, or will in the future use, protected CFRA leave.

17 43. Microsoft's challenged policies and practices therefore have interfered with and will
18 continue to interfere with the exercise of CFRA rights by members of the Group in violation of
19 Government Code section 12945.2, subdivision (q).

20 44. Plaintiff CRD requests relief as described herein.

21 **THIRD CAUSE OF ACTION – PDLL**
22 **Interference with the Exercise of Rights**
23 **Gov. Code, § 12945, subd. (a)**
24 **On Behalf of the Group**

25 45. CRD incorporates and realleges all previous allegations as if fully set forth herein.

26 46. The PDLL prohibits employers from interfering with a person's exercise of or attempt to
27 exercise rights provided under the PDLL including the right of an employee disabled by pregnancy,
28 childbirth, or a related medical condition to take reasonable leave. (Gov. Code, § 12945, subd. (a)(4).)

47. Microsoft's challenged policies and practices have harmed and continue to harm members
of the Group by discriminating in compensation and promotion opportunities because Group members

1 used, or will in the future use, protected PDLL leave.

2 48. Microsoft's challenged policies and practices therefore have interfered with and will
3 continue to interfere with the exercise of PDLL rights by members of the Group in violation of
4 Government Code section 12945, subdivision (a)(4).

5 49. Plaintiff CRD requests relief as described herein.

6 **FOURTH CAUSE OF ACTION – FEHA**
7 **Employment Discrimination Based on Sex**
8 **Gov. Code, § 12940, subd. (a)**
9 **On Behalf of the Women Subgroup**

10 50. CRD incorporates and realleges all previous allegations as if fully set forth herein.

11 51. FEHA prohibits discrimination based on sex “in compensation or in terms, conditions, or
12 privileges of employment.” (Gov. Code, § 12940, subd. (a).)

13 52. Under FEHA, sex encompasses discrimination based on pregnancy, childbirth, and
14 breastfeeding. (*Id.* at § 12926, subd. (r)(1).)

15 53. Within Microsoft's workforce, women are over-represented in the population of workers
16 who use protected leave.

17 54. Microsoft's challenged policies and practices disadvantage workers who use protected
18 leave by discriminating in compensation and promotion opportunities because Group members used, or
19 will in the future use, protected leave. These challenged policies and practices have a disproportionately
20 adverse impact on women.

21 55. Microsoft has not justified and cannot justify this disproportionately adverse effect on
22 women with any legitimate business necessity.

23 56. Alternatively, there are less discriminatory alternatives that would meet any legitimate
24 business necessity.

25 57. Accordingly, Microsoft's challenged policies and practices have discriminated against and
26 will continue to discriminate against members of the Women Subgroup, in violation of Government Code
27 section 12940, subdivision (a).

28 58. Plaintiff CRD requests relief as described herein.

1 **FIFTH CAUSE OF ACTION – FEHA**
2 **Employment Discrimination Based on Disability**
3 **Gov. Code, § 12940, subd. (a)**
4 **On Behalf of the Workers with Disabilities Subgroup**

5 59. CRD incorporates and realleges all previous allegations as if fully set forth herein.

6 60. FEHA prohibits discrimination based on disability “in compensation or in terms,
7 conditions, or privileges of employment.” (Gov. Code, § 12940, subd. (a).)

8 61. Within Microsoft’s workforce, people with disabilities, as defined in Government Code
9 section 12926, subdivisions (j) and (m), are over-represented in the population of workers who use
10 protected leave.

11 62. Microsoft’s challenged policies and practices disadvantage workers who use protected
12 leave by discriminating in compensation and promotion opportunities because Group members used, or
13 will in the future use, protected leave. These challenged policies and practices have a disproportionately
14 adverse impact on people with disabilities.

15 63. Microsoft has not justified and cannot justify this disproportionately adverse effect on
16 people with disabilities with any legitimate business necessity.

17 64. Alternatively, there are less discriminatory alternatives that would meet any legitimate
18 business necessity.

19 65. Accordingly, Microsoft’s challenged policies and practices have discriminated against
20 and will continue to discriminate against members of the Workers with Disabilities Subgroup, in
21 violation of Government Code section 12940, subdivision (a).

22 66. Plaintiff CRD requests relief as described herein.

23 **SIXTH CAUSE OF ACTION – FEHA/PDLL**
24 **Denial of Reasonable Accommodations**
25 **Gov. Code, §§ 12940, subd. (m); 12945, subd. (a)(3)**
26 **On Behalf of the Workers with Disabilities Subgroup**

27 67. CRD incorporates and realleges all previous allegations as if fully set forth herein.

28 68. FEHA, including the PDLL, prohibits employees from denying reasonable accommodations
to workers with disabilities, including pregnancy-related disabilities. (Gov. Code, §§ 12940, subd. (m);
12945, subd. (a)(3).)

69. Through its policies and practices that disadvantage workers who used protected forms of

1 leave, Microsoft has denied and will continue to deny reasonable accommodations to Group members
2 who have used or requested to use protected leave as an accommodation for a disability, including
3 pregnancy, in violation of Government Code sections 12940, subdivision (m) and 12945, subdivision
4 (a)(3).

5 70. Plaintiff CRD requests relief as described herein.

6 **SEVENTH CAUSE OF ACTION – FEHA**

7 **Retaliation**

8 **Gov. Code, § 12940, subd. (h)**

9 **On Behalf of the Group**

10 71. CRD incorporates and realleges all previous allegations as if fully set forth herein.

11 72. FEHA prohibits employers from taking adverse action against a worker who has “opposed
12 any practices forbidden under [FEHA] or because the person has filed a complaint, testified, or assisted
13 in any proceeding under [FEHA].” (Gov. Code, § 12940, subd. (h).)

14 73. Microsoft has retaliated against and will continue to retaliate against Group members who
15 have engaged in protected activities, such as requesting or taking protected leave or complaining to human
16 resources or their supervisors, through actions such as denying professional opportunities, providing
17 negative performance reviews, and decreasing or denying performance-based compensation or
18 promotions, in violation of Government Code section 12940, subdivision (h).

19 74. Plaintiff CRD requests relief as described herein.

20 **EIGHTH CAUSE OF ACTION – FEHA**

21 **Failure to Prevent Unlawful Employment Practices**

22 **Gov. Code, § 12940 subd. (k)**

23 **On Behalf of the Group**

24 75. CRD incorporates and realleges all previous allegations as if fully set forth herein.

25 76. California employers, including Microsoft, are required “to take all reasonable steps
26 necessary to prevent discrimination and harassment . . . from occurring.” (Gov. Code, § 12940, subd. (k).)

27 77. By engaging in the challenged policies and practices alleged herein, Microsoft has allowed
28 discrimination based on sex and disability to occur in its workplace in California despite having notice of
complaints, and Microsoft has failed to adequately train its supervisors and managers on the prevention
of discrimination relating to the use or intended use of protected leave by women and people with

1 disabilities.

2 78. As a result, members of the Group have suffered ongoing employment practices that are
3 unlawful under FEHA.

4 79. Microsoft has therefore failed and will continue to fail to take all reasonable steps necessary
5 to prevent unlawful employment practices, in violation of Government Code section 12940, subdivision
6 (k).

7 80. Plaintiff CRD requests relief as described herein.

8 **NINTH CAUSE OF ACTION – FEHA**

9 **Failure to Prevent Unlawful Employment Practices**

10 **Gov. Code, § 12940 subd. (k); Code Regs., tit. 2, § 11023, subd. (a)(3)**

11 **On Behalf of CRD**

12 81. CRD incorporates and realleges all previous allegations as if fully set forth herein.

13 82. California employers, including Microsoft, are required “to take all reasonable steps
14 necessary to prevent discrimination and harassment. . . from occurring.” (Gov. Code, § 12940, subd. (k).)

15 83. By engaging in the challenged policies and practices alleged herein, Microsoft has allowed
16 discrimination based on sex and disability to occur in its workplace in California despite having notice of
17 complaints, and Microsoft has failed to adequately train its supervisors and managers on the prevention
18 of discrimination relating to the use or intended use of protected leave by women and people with
19 disabilities.

20 84. Microsoft has therefore failed and will continue to fail to take all reasonable steps necessary
21 to prevent unlawful employment practices, in violation of Government Code section 12940, subdivision
22 (k).

23 85. Plaintiff CRD requests relief as described herein.

24 **TENTH CAUSE OF ACTION – TITLE VII**

25 **Employment Discrimination Based on Sex**

26 **42 U.S.C. § 2000e-2(a)**

27 **On Behalf of the Women Subgroup**

28 86. CRD incorporates and realleges all previous allegations as if fully set forth herein.

87. Title VII prohibits discrimination based on sex “with respect to compensation, terms,
conditions, or privileges of employment.” (42 U.S.C. § 2000e-2(a).)

1 88. Within Microsoft’s workforce, women are over-represented in the population of workers
2 who use protected leave.

3 89. Microsoft’s challenged policies and practices disadvantage workers who use protected
4 leave by discriminating in compensation and promotion opportunities. These challenged policies and
5 practices have a disproportionately adverse impact on women.

6 90. Microsoft has not justified and cannot justify this disproportionately adverse effect on
7 women with any legitimate business necessity.

8 91. Alternatively, there are less discriminatory alternatives that would meet any legitimate
9 business necessity.

10 92. Accordingly, Microsoft’s challenged policies and practices have discriminated against and
11 will continue to discriminate against members of the Women Subgroup, in violation of 42 U.S.C. § 2000e-
12 2(a).

13 93. Plaintiff CRD seeks relief as requested herein.

14 **ELEVENTH CAUSE OF ACTION – TITLE VII**
15 **Retaliation**
16 **42 U.S.C. § 2000e-3**
17 **On Behalf of the Women Subgroup**

18 94. CRD incorporates and realleges all previous allegations as if fully set forth herein.

19 95. Title VII makes it unlawful for an employer to discriminate against an employee because
20 the employee has opposed a practice made unlawful under Title VII or has made a charge, testified,
21 assisted, or participated in any Title VII proceeding. (42 U.S.C. § 2000e-3(a).)

22 96. Microsoft has retaliated against and will continue to retaliate against members of the
23 Women Subgroup on the ground that they have opposed leave-taking practices that are unlawful under
24 Title VII because of their unjustified disparate impact on women and/or have exercised leave-taking rights
25 protected by Title VII, in violation of Title VII, 42 U.S.C. § 2000e-3(a).

26 97. Plaintiff CRD requests relief as described herein.

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TWELFTH CAUSE OF ACTION – ADA
Employment Discrimination Because of Disability
42 U.S.C. § 12112
On Behalf of the Workers with Disabilities Subgroup

98. CRD incorporates and realleges all previous allegations as if fully set forth herein.

99. The ADA prohibits discrimination against qualified individuals based on disability in, inter alia, advancement, employee compensation, and other terms, conditions, and privileges of employment (42 U.S.C. § 12112(a).)

100. Microsoft’s challenged policies and procedures, as alleged above, adversely affect the opportunities or status of, deny equal jobs and benefits to, and deny reasonable accommodations to workers with disabilities who use disability leave.

101. Accordingly, Microsoft’s challenged policies and practices have discriminated against and will continue to discriminate against people with disabilities, in violation of 42 U.S.C. §§ 12112(a), (b)(1), and (b)(5).

102. Plaintiff CRD requests relief as alleged herein.

THIRTEENTH CAUSE OF ACTION – ADA
Retaliation and/or Interference
42 U.S.C. § 12203
On Behalf of the Workers with Disabilities Subgroup

103. CRD incorporates and realleges all previous allegations as if fully set forth herein.

104. The ADA makes it unlawful for an employer to discriminate against an employee because the employee has opposed a practice made unlawful under the ADA or has made a charge, testified, assisted, or participated in any ADA proceeding. The ADA also makes it unlawful for an employer to coerce, intimidate, threaten, or interfere with any individual on account of their having exercised and/or enjoyed their rights under the ADA. (42 U.S.C. § 12203(a)–(b).)

105. Microsoft has retaliated against and will continue to retaliate against and/ or interfered with and will continue to interfere with members of the Workers with Disabilities Subgroup on the ground that they have opposed leave-taking practices that are unlawful under the ADA because of their unjustified disparate impact on people with disabilities and/or have exercised leave-taking rights protected by the ADA, in violation of 42 U.S.C. § 12203.

106. Plaintiff CRD requests relief as described herein.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, CRD prays that this Court issues judgment in favor of CRD, and against
3 Microsoft, ordering:

- 4 A. Compensatory damages, including but not limited to, front pay, pay adjustments, back
5 pay, lost wages and benefits, in an amount to be proved at trial;
- 6 B. Other compensatory damages, including but not limited to, damages for emotional
7 distress;
- 8 C. Equitable relief, including but not limited to, reinstatement;
- 9 D. Injunctive relief;
- 10 E. Declaratory relief;
- 11 F. Prejudgment interest, as required by law;
- 12 G. Attorneys' fees and costs to the Civil Rights Department; and
- 13 H. Other relief the Court deems to be just and proper.

14 DATED: July 1, 2024

CALIFORNIA CIVIL RIGHTS DEPARTMENT

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17 SIRI THANASOMBAT, Associate Chief Counsel

DEMAND FOR JURY TRIAL

Plaintiff CRD hereby demands a trial by jury on all claims.

DATED: July 1, 2024

CALIFORNIA CIVIL RIGHTS DEPARTMENT



SIRI THANASOMBAT, Associate Chief Counsel

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EXHIBIT 1

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(Fee Exempt, Gov. Code, § 6103)

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 **CIVIL RIGHTS DEPARTMENT**, an agency
16 of the State of California,

17 Plaintiff,

18 v.

19 **MICROSOFT CORPORATION**,

20 Defendants.

Case No.

**JOINT STIPULATION TO ENTRY OF
[PROPOSED] CONSENT DECREE**

Judge:

Action Filed:

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21 Attorneys for Defendant,
22 MICROSOFT CORPORATION

23 WHEREAS, the California Civil Rights Department (“**CRD**”) and Microsoft Corporation
24 (“**Defendant**,” and collectively with CRD, the “**Parties**”), have entered into a binding settlement and
25 have negotiated a proposed Consent Decree (“**Consent Decree**”), attached hereto as **Exhibit 1**, to
26 completely and finally resolve this action, entitled *California Civil Rights Department v. Microsoft*
27 *Corporation*, Santa Clara Superior Court (the “**Complaint**”);

28 WHEREAS, the Parties agree, for settlement purposes only, that the Fair Employment and
Housing Act (Gov. Code, §§ 12900 *et seq.*) authorizes CRD to resolve this litigation through a mutually
negotiated settlement that provides relief to CRD and the group or class of workers on whose behalf
CRD sought to recover monetary and injunctive relief;

WHEREAS, for settlement purposes only, the Parties have agreed that the Court may approve
and enter the Consent Decree without the procedures that apply to approval of a proposed private class
action settlement because this is not a class action pursuant to California Code of Civil Procedure
section 382;

1 WHEREAS, the Consent Decree was negotiated by CRD, a state agency tasked by the
2 Legislature with enforcing California’s civil rights laws; and,

3 WHEREAS, the Parties agree for the purposes of settlement that terms of the Consent Decree are
4 fair, adequate, and reasonable and conform to California and federal law.

5 THEREFORE, IT IS HEREBY STIPULATED between the Parties, through their respective
6 counsel of record, as follows for settlement purposes only:

7 1. The Consent Decree sets forth the monetary recovery, including recovery for the eligible
8 workers; details about implementation of the Consent Decree; the Notice and Release to be sent to the
9 eligible workers, and issuance of payment; the injunctive relief; and the settlement of any claim by CRD
10 for attorneys’ fees, expenses, and costs, as agreed to by the Parties.

11 2. The provisions of the Consent Decree are fair, adequate, and reasonable, and comply with
12 California and federal law.

13 3. Thus, the Parties submit this Joint Stipulation for entry of said Consent Decree.

14 4. Based on the Parties’ Joint Stipulation for Entry of Consent Decree, the Parties request
15 that the Court order the following:

16 a. The clerk shall enter the [Proposed] Order Granting Entry of Consent Decree
17 Based on Stipulation as a separate docket entry;

18 b. The clerk shall enter the signed Consent Decree, attached hereto as Exhibit 1, as a
19 separate docket entry;

20 c. The signed Consent Decree shall have the effect of a Court order and the Parties
21 shall be bound by its terms;

22 d. The Court shall retain jurisdiction over the Consent Decree to the extent set forth
23 in the Consent Decree;

24 e. The Complaint shall be administratively closed, but the Complaint shall not be
25 dismissed pending expiration of the Consent Decree; and

26 f. Upon the expiration of the Consent Decree, this Complaint shall be dismissed
27 with prejudice.

28 DATED: July 1, 2024

CALIFORNIA CIVIL RIGHTS DEPARTMENT

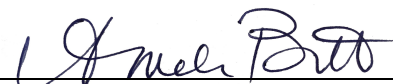
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BY: 
SIRI THANASOMBAT

Attorney for Plaintiff
CALIFORNIA CIVIL RIGHTS DEPARTMENT

DATED: June 30, 2024

GBG LLP

BY: 
AMANDA BOLLIGER

Attorneys for Defendant
MICROSOFT CORPORATION

EXHIBIT 1

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10 Attorneys for Plaintiff,
11 CALIFORNIA CIVIL RIGHTS DEPARTMENT
12 (Fee Exempt, Gov. Code, § 6103)

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 **CIVIL RIGHTS DEPARTMENT**, an agency
14 of the State of California,
15 Plaintiff,
16 v.
17 **MICROSOFT CORPORATION**,
18 Defendants.
19
20

Case No.
[PROPOSED] CONSENT DECREE
Judge:
Action Filed:

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22 MICROSOFT CORPORATION
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1 INTRODUCTION

2 1. Following an investigation, on July 1, 2024, Plaintiff California Civil Rights
3 Department (“**CRD**”), previously called the Department of Fair Employment and Housing, filed a
4 new civil action in the Superior Court for the County of Santa Clara, entitled *California Civil*
5 *Rights Department v. Microsoft Corporation*, Santa Clara County Superior Court (the
6 “**Complaint**”), which CRD will designate as “Complex” through a motion for complexity
7 determination that Defendant Microsoft Corporation (“**Microsoft**”) will not oppose, without
8 waiving the rights of either Party to file peremptory challenges pursuant to California Code of
9 Civil Procedure section 170.6.

10 2. In the Complaint, CRD asserts claims against Microsoft, arising out of Microsoft’s
11 alleged policies and practices relating to protected leaves of absence, pursuant to the Fair
12 Employment and Housing Act (California Government Code section 12900 *et seq.*, hereinafter
13 “**FEHA**”), the California Family Rights Act (California Government Code section 12945.2,
14 hereinafter “**CFRA**”), the Pregnancy Disability Leave Law (California Government Code section
15 12945, hereinafter “**PDLL**”), Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*,
16 hereinafter “**Title VII**”), and the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*,
17 hereinafter “**ADA**”).

18 3. CRD and Microsoft (collectively the “**Parties**” and each a “**Party**”) now agree that
19 it is in each Party’s best interests to fully and finally resolve all claims arising out of and/or
20 related to the claims alleged in the Complaint, the administrative complaint filed by a former
21 Microsoft employee (“**Complainant**”) against Microsoft (DFEH No. 201905-06046307) (the
22 “**Charge**”) and the Department’s Notice of Group or Class Investigation arising out of the Charge
23 dated May 13, 2020 (the “**Investigation Notice**”). The Complaint, Charge, and Investigation
24 Notice are collectively referred to as the “**Action**.”

25 4. The Parties jointly seek approval of this [Proposed] Consent Decree (“**Consent**
26 **Decree**” or “**Settlement**”), which represents the compromise and settlement of all claims in the
27 Action, which Microsoft strongly disputes, and the Parties recognize would require protracted and
28 costly litigation to resolve. Solely for the purposes of entering all orders and judgments

1 authorized in this Consent Decree (including any requests for relief pursuant to Section XIII
2 below) to effectuate the Parties' settlement, the Parties hereby agree to the jurisdiction of this
3 Court over the Parties and the subject matter of the Complaint.

4 5. As set forth in Section XII, this Consent Decree does not constitute an adjudication
5 or finding by this Court on the merits of any of the allegations asserted in the Action, and nothing
6 contained in this Consent Decree shall be construed as an admission of liability or wrongdoing on
7 the part of Microsoft or any Released Parties.

8 6. The Parties agree, for settlement purposes only, that the Court may approve and
9 enter the Consent Decree without the procedures that apply to approval of a proposed private
10 class action settlement because this is not a class action pursuant to California Code of Civil
11 Procedure section 382. The Parties agree, for settlement purposes only, that FEHA authorizes
12 CRD to resolve this litigation through a mutually negotiated settlement that provides relief to
13 CRD and the group or class of workers on whose behalf CRD seeks to recover monetary and
14 injunctive relief. The Parties agree, for the purposes of settlement only, that the terms of the
15 Consent Decree are fair, adequate, and reasonable, and conform to California and federal law.

16 7. Accordingly, CRD and Microsoft have entered into this binding settlement and
17 hereby stipulate and agree to entry of this Consent Decree to completely and finally resolve this
18 Action.

19 8. Therefore, the Parties request the Court's entry of this Consent Decree.

20 **NOW, THEREFORE, IT IS DECREED, ADJUDGED, AND ORDERED AS FOLLOWS:**

21 **I. PARTIES**

22 9. CRD is a state agency charged with investigating and prosecuting civil rights
23 enforcement actions. (Gov. Code, § 12930, subd. (f)(1)-(5).) As set forth in Government Code
24 section 12900 *et seq.*, CRD is charged with enforcing FEHA (which encompasses CFRA and the
25 PDDL), including initiating, investigating, and prosecuting complaints, on behalf of itself and
26 persons alleged to be aggrieved by allegedly discriminatory employment practices. (Gov. Code,
27 §§ 12920.5, 12930, 12961, and 12965.) CRD is additionally authorized to investigate and
28 prosecute related unfair employment practice claims under Title VII and the ADA. (Gov. Code, §

1 12930, subd. (h).)

2 10. CRD will be responsible for filing any court papers relating to the request for
3 approval and entry of the Consent Decree (including CRD’s claim for CRD’s attorneys’ fees,
4 expenses, and costs as discussed in Section X) and any subsequent status reports or other filings
5 required by the Court regarding administration of the Consent Decree (“**Consent Decree Related**
6 **Filings**”). CRD shall provide Microsoft an opportunity to review any Consent Decree Related
7 Filings at least three (3) business days before any such pleadings are filed for the purpose of
8 providing Microsoft with an opportunity to confirm accuracy and consistency of such pleadings
9 with the terms of the Consent Decree. Microsoft may waive the three-day period by informing
10 CRD in writing of its agreement to a shorter timeframe. CRD shall consider any comments or
11 proposed revisions from Microsoft in good faith, and shall not unreasonably reject such
12 comments or revisions.

13 11. Defendant Microsoft is now and was, at all times relevant to this Consent Decree,
14 a Washington corporation operating in and under the laws of the State of California. Microsoft’s
15 corporate headquarters are located in Redmond, Washington. It maintains places of business in
16 the State of California, including in Santa Clara County. At all times relevant to this Action,
17 Microsoft has employed five or more people in California and is and has been an “employer”
18 subject to FEHA and all other applicable statutes.

19 12. The Parties to this Consent Decree are CRD and Microsoft. This Consent Decree
20 shall be binding on and enforceable against CRD and Microsoft and its successors and assigns.

21 **II. PROCEDURAL HISTORY**

22 13. CRD’s Director, in their discretion, may convert an investigation arising out of the
23 filing of an individual administrative complaint into a group or class investigation. (Gov. Code, §
24 12961; Cal. Code Regs., tit. 2, § 10013.) On May 13, 2020, CRD’s Director filed and served the
25 Investigation Notice, which was initiated by the filing of the Charge by Complainant as an
26 individual administrative complaint pursuant to Government Code section 12960, subdivision (c)
27 on October 22, 2019.

28 14. From May 13, 2020, through November 17, 2023, CRD conducted a group or

1 class investigation that included Microsoft’s policies and practices concerning the taking of
2 protected forms of employment leave, pursuant to Government Code sections 12961, subdivision
3 (b)(1) and 12963 *et seq.* Hereinafter, the term “**Investigation**” as used in this Consent Decree
4 includes CRD’s investigation of the individual and group or class allegations referenced in the
5 Investigation Notice.

6 15. At the conclusion of CRD’s Investigation, the Parties engaged in mediation with a
7 mediator, which resulted in an agreement on the terms that are now memorialized in this Consent
8 Decree.

9 16. On October 2, 2020, the Parties fully executed an agreement to toll applicable
10 statutes of limitations for certain claims to allow time for CRD’s Investigation. The Parties
11 executed further tolling agreements thereafter to allow further time for CRD’s Investigation and
12 the Parties’ conciliation efforts (the “Tolling Agreements”). The filing of the Complaint
13 extinguishes all Tolling Agreements and ends any tolling for CRD to bring claims arising out of
14 the Investigation.

15 **III. PURPOSE**

16 17. The Parties are entering into this Consent Decree for the purposes of settlement
17 only, including:

- 18 a. to resolve CRD’s claims arising out of and/or related to the claims alleged
19 in the Action that have occurred up until the entry of the Consent Decree,
20 according to the terms in this Consent Decree and including CRD’s release
21 as set forth in Paragraph 43;
- 22 b. to avoid the time, expense, and uncertainty of litigation;
- 23 c. to provide monetary relief and injunctive remedies for the benefit of the
24 group or class on whose behalf CRD brought suit;
- 25 d. to ensure employment practices in ongoing compliance with FEHA,
26 CFRA, the PDLL, Title VII, and the ADA; and
- 27 e. to provide CRD’s attorneys’ fees and costs pursuant to Government Code
28 section 12965, subdivision (c)(6).

1 **IV. SCOPE AND DURATION OF JURISDICTION**

2 18. The Parties have agreed, solely for the purpose of settlement and subject to Section
3 XIII, that the Court has jurisdiction over the Parties and has subject matter jurisdiction over the
4 Complaint, and thus jurisdiction to enter this Consent Decree, under Article VI, section 10 of the
5 California Constitution; Code of Civil Procedure section 410.10; and Government Code sections
6 12930, subdivision (h) and 12965, subdivision (a)(1).

7 19. Solely for the purposes of settlement, the Parties accordingly submit to the
8 jurisdiction of the Court over the Parties, and the subject matter of this Action, and agree to the
9 power of this Court to enter a Consent Decree to effectuate this settlement.

10 20. Microsoft agrees to forgo any right to removal of the Complaint to federal court
11 pursuant to 28 U.S.C. § 1441.

12 21. This Consent Decree shall become effective immediately on the date on which it
13 has been entered by the Court (“**Effective Date**”).

14 22. This Consent Decree shall remain in effect for a period of thirty (30) months
15 following the Effective Date. Absent an extension, at the end of the 30-month term, this Consent
16 Decree shall expire on its own.

17 23. This Consent Decree, however, shall not expire while any motion or other
18 proceeding to enforce it is pending before the Court.

19 24. The Court retains jurisdiction over this Action during the duration of this Consent
20 Decree solely for the purpose of entering all orders and judgments necessary for the Consent
21 Decree’s administration, and will have all available powers to enforce this Consent Decree,
22 including but not limited to monetary sanctions, injunctive relief, and extension of the term of the
23 Consent Decree, consistent with Section XIII. Subject to Section XIII, the Parties reserve their
24 rights to seek relief from the Court, including such remedies, in the event one Party believes the
25 other Party has breached the terms of the Consent Decree.

26 25. The Complaint may be administratively closed, but the Complaint shall not be
27 dismissed during the Consent Decree’s term.

28 26. CRD shall not take anything from the Complaint except as set forth in this Consent

1 Decree.

2 27. Absent an extension, upon expiration of the Consent Decree's term, CRD will
3 dismiss the Action in its entirety with prejudice on CRD's own behalf ("**Expiration Date**").

4 **V. COVERED WORKERS**

5 28. The "**Settlement Period**" is May 13, 2017, through the Effective Date.

6 29. "**Covered Workers**" are employees who (a) worked for Microsoft in California
7 for at least ninety (90) days (need not have been consecutive) during the Settlement Period; and
8 (b) took one or more leaves of absence that was protected under the California laws and/or federal
9 laws under which the claims in CRD's Complaint arise during the Settlement Period while
10 employed by Microsoft in California (hereinafter "**Protected Leave**").

11 30. If a current or former Microsoft employee disputes whether the employee was
12 employed by Microsoft in California at the time they took a Protected Leave during the
13 Settlement Period for purposes of assessing the employee's eligibility to participate in the
14 Settlement, they must produce evidence to the Settlement Administrator within the Opt-In Period,
15 consistent with the procedures set forth in the Notice (see Exhibit A, as defined in Paragraph 37).
16 The Settlement Administrator will have discretion to make the final decision as to each Covered
17 Worker's eligibility based on any additional information provided by the Covered Worker, CRD
18 and/or Microsoft.

19 **VI. MONETARY RELIEF**

20 31. In settlement of this instant Action, Microsoft shall pay \$14,200,000.00 to
21 establish the "**Settlement Fund**."

22 32. The following costs and expenses will not be paid from the Settlement Fund:
23 Microsoft's portion of any state, local, and/or federal payroll taxes due for any portion of
24 payments to Covered Workers that is treated as wage income; attorneys' fees and costs to be paid
25 to CRD; and the costs of implementation of injunctive relief set forth in Section IX. These costs
26 and expenses will be paid by Microsoft in addition to the Settlement Fund.

27 33. Net Settlement Amount: The "**Net Settlement Amount**" will equal the amount
28 remaining in the Settlement Fund after subtracting the costs of settlement administration incurred

1 by the Settlement Administrator.

2 34. Covered Worker Data: Within forty-five (45) days of the Effective Date, Microsoft
3 will compile from its personnel data and provide to the Settlement Administrator the information
4 listed below relevant to the identification of Covered Workers, calculation of payments, and
5 implementation of the terms of the Consent Decree (“**Covered Worker Data**”). The Covered
6 Worker Data shall include the following information about each Covered Worker: name(s),
7 standard title(s) with Microsoft during the Settlement Period, dates of employment with
8 Microsoft, dates of Protected Leave taken during the Settlement Period (including the start and
9 stop date for each Protected Leave), eligibility for Rewards during the Settlement Period, social
10 security number, and Covered Worker Contact Information (as defined in Paragraph 37 below).

11 35. Allocation of the Settlement Fund to Covered Workers: The Net Settlement
12 Amount shall be distributed to Covered Workers through a payment allocation process, as
13 follows:

14 a. Service Payments:

- 15 i. In recognition of their contribution to CRD’s investigation, the
16 Complainant will receive a thirty-thousand-dollar (\$30,000.00)
17 Service Payment in addition to the Base Payment and Additional
18 Amount which they will be eligible to receive as a Covered Worker
19 pursuant to Paragraph 35, subpart (d).
20 ii. Up to fifteen (15) individuals, whom CRD will identify in its
21 discretion to the Settlement Administrator, will receive a two-
22 thousand-five-hundred-dollar (\$2,500.00) Service Payment for their
23 substantial participation in CRD’s investigation in addition to the
24 Base Payment and Additional Amount which they will be eligible
25 to receive pursuant to Paragraph 35, subpart (d).

- 26 b. Set-Aside Fund: Seven hundred fifty thousand dollars (\$750,000.00) from
27 the Net Settlement Amount will be allocated to a Set-Aside Fund. The
28 Settlement Administrator may use funds in the Set-Aside Fund as needed

1 to adjust payment amounts in response to disputes pursuant to Paragraph
2 38 promptly upon resolution of a Covered Worker’s dispute but by no later
3 than within one hundred ninety (190) days after the date of issue of the last
4 Individual Payment(s).

5 c. Remaining Fund: The Remaining Fund will be the amount remaining in the
6 Net Settlement Amount after subtracting the value of the Service Payments
7 in subpart (a) of this Paragraph, the Set-Aside Fund in subpart (b) of this
8 Paragraph, and the Base Payments set forth in subpart (d)(i) of this
9 Paragraph.

10 d. Individual Payments: With the exception of individuals receiving a
11 Service Payment, each Covered Worker’s Base Amount plus their
12 Additional Amount will equal their “Individual Payment.” For Covered
13 Workers eligible to receive a Service Payment, their “Individual Payment”
14 will equal their Base Amount plus their Additional Amount, plus their
15 Service Payment.

16 i. Base Payment: Each Covered Worker will receive as part of their
17 Individual Payment a base payment of one thousand five hundred
18 dollars (\$1,500.00).

19 ii. Additional Amount: From the Remaining Fund, each Covered
20 Worker will receive an Additional Amount, to be determined by
21 formula at CRD’s sole discretion based on consideration of factors
22 including the Covered Worker’s highest salary during the
23 Settlement Period, length of employment with Microsoft in
24 California during the Settlement Period, and the taking of Protected
25 Leave during the Settlement Period. Each Covered Worker’s
26 Additional Amount will be determined pro rata in proportion to the
27 Remaining Fund amount. The Settlement Administrator’s website
28 shall enable each Covered Worker to access, by entering a unique

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identifier, CRD’s computation that resulted in the amount of their Additional Amount.

iii. Covered Workers will have one hundred eighty (180) days from the issue date of their Individual Payment to opt in by negotiating (i.e., cashing or depositing) the Individual Payment check (the “**180-Day Opt-In Period**”). Covered Workers who opt in to this Settlement by negotiating (i.e., cashing or depositing) their Individual Payment check are referred to herein as “**Participating Covered Workers.**” Any funds in the Remaining Fund one hundred ninety (190) days after the date of issue of the last Individual Payment(s), including any payment allocations to Covered Workers who fail to negotiate their Individual Payments within the 180-day deadline and any money remaining in the Set-Aside Fund, will be allocated to a Redistribution Fund as set forth in subpart (e) of this Paragraph.

iv. Those individuals identified in subpart (a) and (b) of this Paragraph will receive one check for their Individual Payment that includes their Service Payment. However, the Service Payment will not be considered part of their Individual Payment for purposes of any pro rata redistribution pursuant to subpart (e) of this Paragraph.

e. Redistribution Fund: Any funds remaining in the Remaining Fund one hundred ninety (190) days after the date of issue of the last Individual Payment(s), and/or Set-Aside Fund adjustments pursuant to Paragraphs 37 and 38, whichever is later, will constitute the “**Redistribution Fund.**” Within fifteen (15) days thereafter, the Settlement Administrator will allocate the Redistribution Fund through a second payment to all Participating Covered Workers, in proportion to their original Individual Payments (excluding any Service Payments) (“**Second Payment**”), as long as the average amount of the Second Payment is greater than \$75.00 per

1 person. All Participating Covered Workers who receive a Second Payment
2 shall have one hundred eighty (180) days from the check's issue date to
3 negotiate (i.e., deposit or cash) that Second Payment check.

4 f. Cy Près Residual Fund: Two hundred ten (210) days after the date of issue
5 of the last Second Payment(s) pursuant to subpart (e) of this Paragraph, if
6 any, the value from any remaining uncashed Second Payment checks and
7 any remainder in the Redistribution Fund will be disbursed by the
8 Settlement Administrator to the “**Cy Près Residual Fund**,” for the
9 following cy près organization selected by CRD: A Better Balance. If there
10 are no Second Payments (because the condition in subpart (e) of this
11 Paragraph is not met), the Settlement Administrator will disburse the value
12 of the Redistribution Fund to A Better Balance two hundred five (205)
13 days after the date of issue of the last Individual Payment(s) and/or Set-
14 Aside Fund adjustments pursuant to Paragraphs 37 and 38, whichever is
15 later.

16 36. Tax Allocation:

- 17 a. Individual Payments and Second Payments to Covered Workers under
18 Paragraph 35 shall be designated in equal parts as wage and non-wage
19 income.
- 20 b. The Parties make no representations or warranties with respect to tax
21 consequences of any payment under this Consent Decree, do not intend
22 anything contained in this Consent Decree to constitute advice regarding
23 taxes or taxability, and nothing in this Agreement may be relied upon as
24 such. Covered Workers shall be solely responsible for correctly
25 characterizing any compensation received under this Consent Decree on
26 their personal income tax returns for tax purposes, and paying all
27 appropriate taxes due and penalties assessed on any and all amounts paid to
28 them under this Consent Decree. Covered Workers who opt in, by cashing

1 or depositing their Individual Payment, and Participating Covered Workers
2 who cash or deposit Second Payments will hold the Parties free and
3 harmless from and against any claims resulting from treatment of such
4 payments as non-taxable damages, including the treatment of such payment
5 as not subject to withholding or deduction for payroll and employment
6 taxes.

7 **VII. NOTICE**

8 37. The Settlement Administrator will provide each Covered Worker notice of the
9 Settlement via individualized notice (“**Notice**”), in substantially similar form as the Notice
10 attached hereto as **Exhibit A**. The Notice shall be sent by the Settlement Administrator via first-
11 class mail, email, and text message to each Covered Worker’s last known residential address,
12 personal email address and personal telephone number, to the extent such contact information
13 exists in Microsoft’s personnel records for any Covered Worker (“**Covered Worker Contact**
14 **Information**”). Mailed Notices will be sent by the Settlement Administrator along with the
15 Covered Worker Release (attached hereto as **Exhibit B** and described in Paragraph 44 below), a
16 copy of this Consent Decree, and the Covered Worker’s Individual Payment check (“**Notice**
17 **Packet**”) via an appropriately secure method consistent with the Settlement Administrator’s
18 recommendation. Prior to the Notice Packet mailing, the Settlement Administrator shall update
19 the addresses contained in the Covered Worker Data (as defined in this Paragraph and Paragraph
20 34 above) using the United States Postal Service’s National Change of Address database. The
21 Notice Packets will be sent by the Settlement Administrator within fifteen (15) days of the
22 Settlement Administrator’s receipt of the wired funds for such payments, consistent with Sections
23 VI and XI.

24 38. If a Covered Worker wishes to dispute CRD’s formulation of their Additional
25 Amount (as described in Paragraph 35, subpart (d)(ii)), they must produce appropriate evidence to
26 the Settlement Administrator within the Opt-In Period, consistent with the procedures set forth in
27 the Notice. Microsoft’s records will be presumed determinative, but the Settlement Administrator
28 will have discretion to make the final decision as to each Covered Worker’s employment tenure,

1 pay or Protected Leave information based on any additional information provided by the Covered
2 Worker and/or Microsoft, and may make adjustments as the Settlement Administrator deems
3 necessary from the Set-Aside Fund. The Settlement Administrator and CRD may cooperate in
4 addressing and resolving such disputes.

5 39. The Covered Worker will be deemed to have fully participated in the monetary
6 recovery provisions of the Consent Decree by depositing or cashing the applicable Individual
7 Payment within one hundred eighty (180) days of the date on which the check was issued, and in
8 doing so, the Covered Worker will release claims according to the Covered Worker Release that
9 will be Exhibit B (described in Paragraph 44 and as updated to conform to the Court's order
10 entering the Consent Decree).

11 40. Any Covered Worker who fails to deposit or cash the Individual Payment within
12 one hundred eighty (180) days of the date on which the check was issued will be deemed not to
13 have participated in the monetary recovery provisions of the Consent Decree and not to have
14 released any claims. As set forth in Paragraph 35, subpart (e), their Individual Payment will be
15 allocated to the Redistribution Fund.

16 41. If any Notice Packet is returned with a forwarding address, the Settlement
17 Administrator shall re-mail the Notice Packet including the Individual Payment to the new
18 address within fourteen (14) days. If any Notice Packet is returned as undeliverable (i.e., the
19 envelope is marked "Return to Sender"), the Settlement Administrator shall perform a standard
20 skip trace and search the United States Postal Service's National Change of Address database
21 again in an effort to ascertain a more current address of the Covered Worker in question and, if
22 such an address is ascertained, the Settlement Administrator shall re-mail the Notice Packet
23 including the Individual Payment to any alternative or updated address that is located (if located),
24 within fourteen (14) days of the Notice Packet being returned as undeliverable. With respect to
25 envelopes marked "Return to Sender," the Settlement Administrator will also call any identified
26 last-known telephone numbers (and telephone numbers updated through public and proprietary
27 databases) of Covered Workers or use other standard procedures or additional means agreed to by
28 the Parties to obtain current addresses for Covered Workers and may request from Microsoft

1 updated Covered Worker Contact Information. If an alternative address cannot be located for a
2 Covered Worker whose Notice Packet is returned as undeliverable, their allocated payment(s)
3 shall be redistributed, as if they had not cashed or deposited them, consistent with Paragraph 35,
4 subpart (e).

5 **VIII. RELEASES**

6 42. This Consent Decree fully, completely, and finally resolves all allegations, issues
7 and claims, litigation, or proceedings, arising from acts that occurred through the Effective Date,
8 as asserted, or reasonably related to, any claims made by CRD in the Action, as set forth herein.
9 Accordingly, within five (5) days of the Effective Date, CRD will close its investigation of the
10 Charge, including its investigation of the allegations in Complainant’s administrative complaint
11 and the group/class allegations in the Investigation Notice.

12 43. CRD’s Release: Through this Consent Decree, CRD fully and finally releases
13 Microsoft, including each of its past, present and future subsidiaries, parents, holding companies,
14 related or affiliated companies and divisions, joint ventures, and with respect to each such entity,
15 all of its past, present, and future shareholders, owners, officers, directors, employees, agents,
16 administrators, servants, representatives, attorneys, insurers, re-insurers, fiduciaries, successors,
17 and assigns, both individually and in their official capacities, and any individual or entity who
18 could be jointly liable with, and persons acting by, through, under, or in concert with, any of these
19 persons or entities (“Released Parties”) from the claims arising out of and/or related to the claims
20 alleged in the Action up to and including the Effective Date, including (collectively, “Released
21 Claims”):

- 22 a. claims for discrimination based on sex and/or disability relating to the use,
23 requested use, or taking of Protected Leave arising under Government
24 Code section 12940, subdivision (a); 42 U.S.C. § 2000e-2; and/or 42
25 U.S.C. § 12112(a), (b);
- 26 b. claims for interference with or retaliation as a result of the exercise of
27 rights to use, request to use, or take Protected Leave arising under
28 Government Code sections 12945.2, subdivision (k), (q), 12940,

1 subdivision (h), and 12945, subdivision (a)(4); 42 U.S.C. § 2000e-3; and/or
2 42 U.S.C. § 12203;

3 c. claims based on the denial of reasonable accommodations relating to the
4 use, requested use, or taking of Protected Leave arising under Government
5 Code sections 12940, subdivision (m) and 12945, subdivision (a)(3);
6 and/or 42 U.S.C. § 12112(b);

7 d. claims based on Microsoft's alleged failure to prevent unlawful
8 employment practices relating to the use, requested use, and taking of
9 Protected Leave arising under Government Code section 12940,
10 subdivision (k).

11 44. Covered Workers' Release: A Covered Worker must voluntarily choose to deposit
12 or cash their Individual Payment, as described in Section VI (after receiving the Notice Packet) to
13 release any individual claims. Covered Workers who choose to opt in by accepting (i.e.,
14 depositing or cashing) their Individual Payment will release claims consistent with the individual
15 release form that is attached hereto as **Exhibit B** ("Covered Worker Release").

16 45. This Consent Decree does not resolve any administrative complaints that are either
17 (a) filed after the Effective Date or (b) not released under this Consent Decree. CRD reserves all
18 rights to proceed regarding matters not covered in this Consent Decree. Each individual release
19 pursuant to Paragraph 44 encompasses only those claims covered in the Covered Worker Release,
20 and nothing more.

21 46. This Consent Decree in no way affects CRD's statutory rights or duties to process
22 complaints or notices against Microsoft that raise claims not covered by this Consent Decree,
23 including commencing a civil action on any such complaints or notices. This Consent Decree
24 shall in no way hinder or affect an individual's right to file a complaint involving Microsoft with
25 CRD or any other applicable agency, or to participate in a government investigation or CRD's
26 investigation of, and determinations regarding, such complaints.

27 **IX. SPECIFIC INJUNCTIVE RELIEF**

28 47. Provided that the Court approves the Decree, Microsoft will abide by the "Specific

1 **Injunctive Relief Terms**” set forth in this Section for thirty (30) months after the Effective Date.

2 48. Third-Party Consultant Review and Reporting:

- 3 a. CRD and Microsoft agree to select *APTMetrics* as a third-party consultant
4 who will be responsible for confirming that Microsoft has complied with
5 all non-monetary terms of this settlement (the “**Third-Party Consultant**”).
- 6 b. Within one hundred eighty (180) days after the Effective Date and on an
7 annual basis for the duration of the Consent Decree, Microsoft will provide
8 to the Third-Party Consultant all investigation reports by Microsoft’s
9 Workplace Investigations Team (“**WIT**”) completed within the preceding
10 twelve (12) months into California employees’ concerns that their Rewards
11 outcome and/or their promotion decisions reflect leave discrimination or
12 leave retaliation. Microsoft will provide the Third-Party Consultant with
13 the WIT investigator’s written findings regarding the preceding issues and
14 all intake documents identifying the preceding concern to WIT and, if
15 requested by the Third-Party Consultant, the complete WIT investigation
16 file, with the purpose that the Third-Party Consultant will conduct an
17 independent review and make recommendations in their professional
18 judgment regarding Microsoft’s investigation processes for addressing such
19 concerns. The components of the processes that the Third-Party Consultant
20 will consider will include without limitation how complaints are received
21 and processed, the information Microsoft considered (e.g. who was
22 interviewed, which documents were reviewed), communications with the
23 complainant, confidentiality, and maintenance of complaints and
24 investigation records.
- 25 c. The Third-Party Consultant will provide CRD with annual reports
26 summarizing Microsoft’s progress on implementing and/or completing
27 each of the non-monetary terms described in this Section IX.
- 28 i. The Third-Party Consultant will include in their annual compliance

1 report to CRD the status and methodology of the Third-Party
2 Consultant’s independent review regarding Microsoft’s
3 investigation processes, as described above, for addressing the
4 concerns described in subpart (b) of this Paragraph. If requested by
5 CRD, the Third-Party Consultant will meet with CRD to discuss the
6 annual report and/or other matters related to the non-monetary
7 terms.

8 ii. Where the Third-Party Consultant made a recommendation
9 regarding Microsoft’s investigation processes, as described above,
10 that Microsoft declined to adopt, the Third-Party Consultant’s
11 annual compliance report will include Microsoft’s reasons for that
12 decision. Nothing in this Consent Decree requires Microsoft to
13 disclose information protected by attorney-client privilege or
14 attorney work product.

15 49. Training:

16 a. Manager Training: Beginning with Microsoft’s first annual Rewards cycle
17 that begins after the Effective Date and continuing on an annual basis for
18 the duration of the Consent Decree, Microsoft will require all direct and
19 second-level managers for any California employee (“**California**
20 **Employee Managers**”) to attest during the same calendar year for each
21 such Rewards cycle that they have completed the “Determine Impact and
22 Recommend Rewards” training (“**Manager Training**”) before such
23 California Employee Managers access the ManageRewards Tool to
24 determine impact and recommend Rewards for a California employee. The
25 Manager Training will be interactive and will:

26 i. Reiterate and reinforce that managers must not consider any time
27 on protected leave when determining impact and recommending
28 Rewards for employees who report to them, and that the time

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period an employee is on protected leave cannot count against him/her when evaluating that employee’s impact or performance or when making recommendations to promote or not promote employees;

- ii. Reiterate that Microsoft’s policies and guidelines prohibit discrimination against employees because they have requested or have taken protected leave and discrimination based on sex or disability;
- iii. Address unconscious bias against those on protected leave or those who request protected leave; and
- iv. Reference the various types of protected leave that Microsoft provides to employees under California law and that leave can be a reasonable accommodation.

b. Human Resources Training: Beginning with the first annual Rewards cycle that begins after the Effective Date and continuing on an annual basis for the duration of the Consent Decree, Microsoft will require all Human Resources employees who have responsibility to facilitate the annual Rewards process (“**Rewards Leads**”) for California employees, and all employees who have responsibility to investigate concerns raised by California employees that their Rewards outcome and/or their promotion decision reflects leave discrimination or leave retaliation, to complete, virtually or online, an interactive training that will:

- i. Reiterate and reinforce that managers must not consider any time on protected leave when determining impact and recommending Rewards for employees who report to them, and that the time period an employee is on protected leave cannot count against him/her when evaluating that employee’s impact or performance or when making recommendations to promote or not promote

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- employees;
 - ii. Reiterate that Microsoft’s policies and guidelines prohibit discrimination against employees because they have requested or have taken protected leave and discrimination based on sex or disability;
 - iii. Address unconscious bias against those on protected leave or those who request protected leave; and
 - iv. Reference the various types of protected leave that Microsoft provides to employees under California law and that leave can be a reasonable accommodation.
- c. The Third-Party Consultant will be responsible for confirming that Microsoft has complied with this Paragraph 49. The Third-Party Consultant’s annual compliance reports to CRD will confirm compliance with this Paragraph 49, in addition to the report content required by Paragraph 48, subpart (c).

50. Policy Modifications:

- a. Microsoft will commit to continuing to provide California employees, via information posted to Microsoft’s HRweb, detailed information about its generous leave benefits and options, including leaves provided pursuant to California and federal laws.
- b. Microsoft will commit for the duration of the Consent Decree that its policies/guidelines regarding determining impact, recommending Rewards, and regarding People Discussions will continue to provide that managers must not consider any time on leave when determining impact and evaluating performance and that time an employee is on protected leave shall not be counted against that employee in evaluating that employee’s impact.
- c. Within ninety (90) days of the Effective Date, the Third-Party Consultant

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will:

- i. Evaluate whether any amendment(s) could be made to Microsoft’s policies/guidelines regarding determining impact and recommending Rewards outcomes for California employees to ensure that these policies/guidelines consistently and expressly state that the time an employee is on protected leave shall not be counted against that employee in evaluating that employee’s impact. Where the Third-Party Consultant made a recommendation regarding an amendment to such policies/guidelines that Microsoft declined to adopt, the Third-Party Consultant’s annual compliance report will include Microsoft’s reasons for that decision.

- ii. Evaluate whether any amendment(s) could be made to notices provided to employees of Microsoft via Microsoft’s intranet describing avenues available for California employees to raise concerns to ensure that it is clear to employees that those concerns may include concerns that their Rewards outcomes and/or promotion decisions reflect leave discrimination or leave retaliation. If Microsoft becomes aware during such Third-Party Consultant review of additional policies/guidelines on HRweb directed to all California employees that describe such avenues, the Third-Party Consultant also will evaluate whether any amendment(s) could be made to those additional policies/guidelines to ensure that it is clear to employees that those concerns may include concerns that their Rewards outcomes and/or promotion decisions reflect leave discrimination or leave retaliation.

- iii. Evaluate Microsoft’s policies/guidelines regarding the calculation of bonus eligible salary (“**BES**”) for California employees and determine whether to recommend any amendment(s) to those

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policies/guidelines in light of the fact that BES is calculated based on time in active status, meaning those in active status may have relatively higher BES than those in inactive status (such as leave) during the calculation period. In considering the information provided by the Parties (as described in subparts (1)-(5) below), the Third-Party Consultant will base its evaluation on its experience in reviewing employer policies and related expertise, including consideration of any academic research the Third-Party Consultant determines to be relevant.

1. On the issue of calculating BES, Microsoft will provide the Third-Party Consultant with access to a knowledgeable individual and HRweb documents and any information (other than information protected by attorney-client privilege or attorney work product) that the Third-Party Consultant deems necessary to complete an adequate evaluation process of Microsoft’s policies/guidelines regarding the calculation of BES for California employees.
2. Microsoft may, at its discretion, provide the Third-Party Consultant with information, including but not limited to information to enable the Third-Party Consultant to understand what BES is and what it is used for, why Microsoft has BES, and how BES is calculated.
3. CRD may provide the Third-Party Consultant with statistical analyses provided by an expert retained by CRD or other information that CRD wants the Third-Party Consultant to receive as it performs the above-described evaluation.
4. The Third-Party Consultant will include in its annual

1 compliance report to the CRD a summary of its evaluation
2 of the above BES information and any recommended
3 amendment(s) to how Microsoft calculates BES, including
4 but not limited to the information considered and the
5 reasons underlying any recommended amendment(s).

6 5. In the event that the Third-Party Consultant makes a
7 recommendation regarding Microsoft's BES policy that
8 Microsoft declines to adopt, Microsoft will notify CRD and
9 virtually meet with CRD to, in good faith, explain
10 Microsoft's reasons for declining to adopt the
11 recommendation (without disclosing information protected
12 by the attorney client privilege or attorney work product),
13 inform CRD whether Microsoft has identified any potential
14 alternatives to the recommendation that it may implement,
15 and, if so, disclose those alternatives to CRD. The Third-
16 Party Consultant may also attend any such virtual meeting
17 or call, if both Parties agree.

18 d. Beginning with Microsoft's first annual Rewards cycle that begins after the
19 Effective Date and continuing on an annual basis for the duration of the
20 Consent Decree, Microsoft agrees to elevate as one of the key themes at
21 annual People Discussions that managers must not consider any time on
22 protected leave when determining impact and recommending Rewards for
23 employees who report to them, and that the time period an employee is on
24 protected leave cannot count against him/her when evaluating that
25 employee's impact or performance or when making recommendations to
26 promote or not promote employees.

27 e. Microsoft already provides extensive information to employees via its
28 intranet (e.g., HRweb) regarding the numerous avenues available for

1 employees to raise concerns about their Rewards outcomes or about any
2 alleged violations of Microsoft’s anti-discrimination, anti-retaliation, and
3 other policies, and will agree to continue to make those avenues available
4 for the duration of the Consent Decree.

5 f. Microsoft will commit that WIT investigation processes will continue to
6 include a process for reconsidering an investigation outcome.

7 **X. ATTORNEYS’ FEES, EXPENSES, AND COSTS**

8 51. The Parties have agreed to settle for \$225,000.00 any claim by CRD for attorneys’
9 fees, expenses, and costs incurred in this Action by CRD, including, e.g., any attorneys’ fees; any
10 expert costs, fees or expenses; and costs, if any, incurred by CRD in connection with this Action
11 or with CRD’s participation in the implementation of the Specific Injunctive Relief Terms set
12 forth in Section IX. Microsoft will not oppose CRD’s request or submission for such attorneys’
13 fees, expenses, and costs up to \$225,000.00.

14 52. CRD will submit declaration evidence to support approval of the Consent Decree,
15 including this claim for CRD’s attorneys’ fees, expenses, and costs, subject to Microsoft’s
16 opportunity to review consistent with Paragraph 10.

17 53. Except as otherwise provided herein, each Party shall bear its own attorneys’ fees,
18 costs, and expenses related to the Action, including the costs for either Party to retain any expert
19 in connection with this Action (e.g., as part of ongoing Specific Injunctive Relief Terms) and all
20 other fees, costs or expenses incurred in implementing the terms and conditions of this
21 Agreement.

22 **XI. DATA AND SETTLEMENT ADMINISTRATOR**

23 54. Settlement Administrator Selection: The Parties agree to mutually select a neutral
24 third-party Settlement Administrator to administer the Settlement Fund (the “**Settlement**
25 **Administrator**”). CRD agrees to request bids that include each settlement administrator’s data
26 privacy standards and assurances from the following potential settlement administrators and may
27 seek bids from additional settlement administrators in its discretion: Simpluris, JND Legal
28 Administration, and Settlement Services, Inc. CRD will share all such bids with Microsoft within

1 fifteen (15) days of the Effective Date. The Parties will agree in writing on, and Microsoft will
2 retain, a Settlement Administrator after CRD obtains at least three competitive bids, within fifteen
3 (15) days after Microsoft receives the last bid from CRD (as described in this Paragraph).

4 55. No later than forty-five (45) days after the Effective Date, Microsoft will provide
5 Covered Worker Data for each Covered Worker (as set forth in Paragraph 34 above) to the
6 Settlement Administrator.

7 56. The Settlement Administrator shall maintain the Covered Worker Data in the
8 strictest confidence and shall not disclose it to anyone, other than CRD as set forth in the
9 following paragraph, except that (i) each Covered Worker may review their own Covered Worker
10 Data on the Settlement Administrator's website (as discussed in Section VI), and (ii) the
11 Settlement Administrator may disclose the Covered Worker Data as required by applicable law.
12 With regard to Covered Workers' social security numbers, the Settlement Administrator shall
13 have sole access to and will utilize such information only for the purpose of locating and
14 identifying Covered Workers and to report taxes to Microsoft and applicable governmental
15 authorities.

16 57. No later than sixty (60) days after the Effective Date, the Settlement Administrator
17 will provide to CRD those components of the Covered Worker Data necessary for CRD to
18 determine a formulaic allocation for Additional Amounts. In so doing, the Settlement
19 Administrator will assign a unique ID number to each Covered Worker. The Settlement
20 Administrator will provide Covered Worker Data to CRD using the assigned unique ID numbers
21 in lieu of names and will withhold from CRD Covered Workers' social security numbers and
22 Covered Worker Contact Information.

23 58. Within seventy-five (75) days of the Effective Date, CRD will, within its
24 discretion, determine a formulaic allocation for the Additional Amounts due to each Covered
25 Worker, and provide that information to the Settlement Administrator. Within fifteen (15) days of
26 the Settlement Administrator's receipt of this information from CRD, the Settlement
27 Administrator will calculate the employer's share of payroll taxes for each Covered Worker based
28 on their Individual Payment ("**Payroll Tax Calculation**"). The Settlement Administrator shall

1 provide that calculation to the Parties. Within fifteen (15) days of the Parties' receipt of the
2 payroll tax calculation described in this Paragraph from the Settlement Administrator, Microsoft
3 will transfer via wire transfer(s) the Settlement Fund amount and the specified Payroll Tax
4 Calculation amount to the Settlement Administrator. Within fifteen (15) days of receipt of these
5 funds from Microsoft, the Settlement Administrator shall send the Notice Packets, including the
6 Individual Payments to Covered Workers (using the procedures described in Section VII to obtain
7 forwarding addresses and update the addresses contained in the Covered Worker Data).

8 59. The Parties shall work in good faith with one another and the Settlement
9 Administrator to address and resolve any questions or concerns raised by any Covered Worker
10 regarding the calculation of their Individual Payment, if they arise.

11 60. Additional Settlement Administrator Duties: In addition to the foregoing, the
12 Settlement Administrator shall:

- 13 a. Establish a Qualified Settlement Fund pursuant to Internal Revenue Code
14 section 1.468B-1 *et seq.*;
- 15 b. Create and maintain a website, email address, and toll-free telephone
16 number that will allow each Covered Worker to review information
17 pertaining to their own pay, duration of employment at Microsoft, and
18 taking of Protected Leave to understand the calculation by CRD, in its sole
19 discretion, of the precise Additional Amount that each Covered Worker
20 will receive, pursuant to Section VI. The website shall state that the
21 information posted is based on Microsoft's records;
- 22 c. Complete and send the Notice Packets and calculate Individual Payments
23 for each Covered Worker after CRD provides the Settlement Administrator
24 with each Covered Worker's Additional Amount (as set forth in Paragraph
25 58 and Section VI above);
- 26 d. Distribute the Notice Packets, including Individual Payments and Second
27 Payments, if any (and if there will be Second Payments, the Settlement
28 Administrator will notify Microsoft of the payroll tax calculation for those

1 Second Payments and receive a transfer of that amount from Microsoft
2 consistent with Paragraph 58), as described in Section VI;

3 e. Transmit any funds remaining in the Redistribution Fund following the
4 distribution of any Second Payments and the expiration of time for
5 Covered Workers to negotiate them to the cy près recipient A Better
6 Balance, as provided in Paragraph 35, subpart (f).

7 f. Be responsible for all tax reporting for all payments made; and

8 g. Complete other duties as necessary to administer the Settlement Fund.

9 61. The Settlement Administrator shall be paid its fees and expenses from the
10 Settlement Fund.

11 62. During the 180-day Opt-In Period, the Settlement Administrator shall provide to
12 counsel for the Parties, at least twenty-one (21) business days prior to the close of the 180-day
13 Opt-In Period, a list of Covered Workers to whom Notices were returned as undeliverable and for
14 whom efforts to obtain an alternative address failed. Within ten (10) days after final disbursement
15 of all funds from the Redistribution Fund, the Settlement Administrator will provide counsel for
16 the Parties, and CRD shall file with the Court, a declaration from the Settlement Administrator
17 providing a final report on the disbursements of all funds from the Settlement Fund.

18 **XII. MISCELLANEOUS TERMS**

19 63. The Decree does not constitute an admission by CRD that its claims lacked merit.

20 64. Likewise, Microsoft denies each and all of the claims alleged in the Action.
21 Neither this Consent Decree, nor any document referred to or contemplated herein, nor any action
22 taken to carry out this Consent Decree, is, may be construed as, or may be used as, an admission,
23 concession, or indication by or against Microsoft or any Released Parties of any fault,
24 wrongdoing, or liability whatsoever, or as an admission by Microsoft or any Released Parties of
25 any violations of any order, law, statute, duty, public policy, contract, or obligation whatsoever.
26 Microsoft disputes and denies that it engaged in any wrongdoing or unlawful conduct of any kind
27 at any time. In addition, Microsoft contends that it has complied with its obligations under
28 applicable law. Microsoft maintains that neither this Consent Decree nor any other document that

1 may be filed with the Court is in any way an admission or finding that Microsoft or any Released
2 Parties engaged in any wrongdoing or unlawful conduct, or that pursuit of the Action on a class or
3 group basis would be proper under any applicable standard in the Action or any other litigation.

4 65. Commitment to Transparency: Microsoft reaffirms that its workers have rights to
5 voluntarily communicate with the government about any matter, to file or pursue a civil action or
6 complaint, and to notify any state agency, other public prosecutor, law enforcement agency, or
7 any court or other governmental entity of any potentially unlawful employment practice, and will
8 not intentionally interfere with the exercise of such rights.

9 66. Under no circumstances shall CRD, by agreeing to a term or commenting or
10 electing not to comment upon proposed policies or procedures pursuant to Section IX, be deemed
11 to have accepted the term or the validity of, or approved, the provisions adopted by Microsoft, for
12 any matter outside of this Consent Decree.

13 67. The terms of this Consent Decree shall remain confidential until they are presented
14 to the Court in connection with the filing of the Consent Decree and stipulation for entry thereof.

15 68. The descriptive heading of any section or paragraph of this Consent Decree is
16 inserted for convenience of reference only and does not constitute a part of this Consent Decree.

17 69. For settlement purposes only and subject to Paragraphs 63 and 64, the Parties and
18 their respective counsel agree and warrant that this Consent Decree reflects a fair, adequate and
19 reasonable settlement of the Action and that they have arrived at this Consent Decree through
20 arms'-length negotiations, taking into account all relevant factors, current and potential, and on
21 that basis, have presented it to the Court.

22 **XIII. ENFORCEMENT**

23 70. As requested by the Parties, the Court retains jurisdiction over the Action for the
24 duration of this Consent Decree solely for the purpose of entering all orders and judgments
25 authorized herein to enforce this Consent Decree (including any requests for relief pursuant to
26 this Section).

27 71. The Parties agree that, if a dispute arises with respect to CRD's or Microsoft's
28 compliance with, interpretation of, or implementation of the terms of this Consent Decree, a good

1 faith effort shall be made by the Parties to resolve such differences in accordance with the
2 following procedure prior to initiating any action to enforce this Consent Decree (if either Party
3 believes it necessary), as follows:

4 a. If a Party believes a dispute must be resolved, the Parties shall submit the
5 dispute to mediator Hunter Hughes to attempt to facilitate a resolution of
6 the Parties' dispute. In so doing, Mediator Hughes may request additional
7 information and request that the Parties participate in a telephonic
8 conference. All such communications with Mediator Hughes will be
9 confidential settlement and mediation communications.

10 b. If a dispute remains after the Parties submit their dispute to Mediator
11 Hughes, the Party that believes a dispute must be resolved shall promptly
12 notify the other Party, through their "**Counsel of Record**" (i.e.,
13 undersigned counsel for each Party and any other counsel who enter
14 appearances for a Party in the Action), in writing, of the nature of the
15 dispute. This notice shall specify the particular provision(s) that either
16 Party believes has been breached. The Party receiving notice shall have
17 thirty (30) days from the date of the written notice to provide a response.
18 The Parties may extend this period upon mutual consent.

19 72. After forty-five (45) days, inclusive of the thirty (30) days referenced in Paragraph
20 71, subpart (b), have passed from the written notice described in Paragraph 71, subpart (b) above
21 with no resolution or agreement to extend the time, either Party may petition the Court for
22 resolution of the dispute, seeking all available relief relating to enforcement of the Consent
23 Decree, including an extension of the term of the Consent Decree, and/or any other relief that the
24 Court may deem appropriate that is consistent with this Consent Decree.

25 73. Failure of either Party to seek enforcement with respect to any instance or
26 provision of the Consent Decree shall not be construed as a waiver of enforcement regarding
27 other instances or provisions.

28 74. The Parties will negotiate in good faith to agree upon a "**Stipulation and**

1 **[Proposed] Protective Order**” which CRD shall file with the Court within fourteen (14) days of
2 the Consent Decree being filed. Until such **Stipulation and [Proposed] Protective Order** is
3 filed, the Parties shall not reveal, divulge, give, or make available any documents that Microsoft
4 produced to CRD with the legend “Confidential” in the course of CRD’s investigating the Action,
5 including, without limitation, personnel data, personnel records, employee rewards outcomes, and
6 personal contact information or other personally identifying information or characteristics. Once
7 filed, the Parties shall comply with the terms of such Stipulation and [Proposed] Protective Order
8 until such time as the Court enters a final Stipulation and Protective Order.

9 **XIV. MODIFICATION & SEVERABILITY**

10 75. This Consent Decree, inclusive of Exhibits A and B hereto, is the entire agreement
11 and commitments of the Parties with respect to the matters contained herein. Other than the
12 Parties agreeing in writing to extend a deadline specified in this Consent Decree, no waiver,
13 modification, or amendment of any of this Consent Decree’s provisions shall be effective unless
14 made in writing, signed by an authorized representative of CRD and Microsoft, and approved by
15 the Court.

16 76. If any provision(s) of this Consent Decree is found to be unlawful or
17 unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments to
18 this Consent Decree in order to effectuate the purposes of the Consent Decree. In any event, only
19 such provision(s) found to be unlawful shall be severed, and the remainder of the Consent Decree
20 shall remain in full force and effect. The Parties shall not, individually or in combination with
21 another person, agency, or entity, seek to have any provision of this Agreement declared or
22 determined invalid.

23 77. The Parties have cooperated in the drafting and preparation of this Consent
24 Decree. This Consent Decree will not be construed against any Party on the basis that the Party
25 was the drafter or participated in the drafting.

26 **XV. EXECUTION**

27 78. Provided that the Court’s approval of this Consent Decree is consistent with its
28 material terms, the Parties and their respective counsel hereby waive any and all rights to appeal

1 from it, including all rights to any appellate proceeding and any extraordinary writ, and the
2 Consent Decree therefore will become non-appealable at the time it is entered. The waiver of
3 appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or
4 post-judgment proceedings. If an appeal is taken, the time for consummating this Consent Decree
5 (including making payments under this Consent Decree) may be suspended until such time as the
6 appeal is finally resolved and the Consent Decree becomes final.

7 79. The signatories to this Consent Decree confirm that they have the authority to bind
8 the respective Parties identified below to the terms of this Consent Decree, including authority
9 pursuant to Code of Civil Procedure section 664.6, subdivision (b).

10 80. This Consent Decree may be executed in counterparts, each of which shall be
11 deemed an original, and which together shall constitute the Parties' single agreement. Facsimile,
12 email, PDF, and photocopied signatures shall also be deemed original for all purposes.

13 **IT IS SO DECREED, ADJUDGED, AND ORDERED** this ____ day of _____,
14 202__.

15
16 _____
17 Honorable _____
18 Judge for the Superior Court for Santa Clara County

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1 The undersigned hereby apply for and consent to entry of this Consent Decree:

2 DATED: July 1, 2024

FOR CALIFORNIA CIVIL RIGHTS
DEPARTMENT



7 DATED: July 1, 2024

FOR MICROSOFT CORPORATION



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EXHIBIT A



Superior Court of California, County of Santa Clara
California Civil Rights Dept. v. Microsoft Corporation
Case No. [XXX]

Notice of Settlement

***Authorized by the Superior Court of California,
County of Santa Clara***

Did you work for Microsoft Corporation and take one or more leaves of absence protected by California and/or federal law from May 13, 2017 to [entry of Consent Decree]

There is a \$___ million settlement of a lawsuit.
You may be entitled to money.

What you should do now:

1. Read this notice
2. Decide whether to cash the enclosed check and release your claims

Important things to know:

- If you take no action, you will not be bound by the settlement, and your rights will not be affected.
 - You can learn more at: [INSERT CASE LINK].
-

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About This Notice

Why did I get this notice?

This notice provides information about the settlement (described in the "Consent Decree") in the lawsuit *California Civil Rights Department v. Microsoft Corp.*, brought by the California Civil Rights Department ("CRD") on behalf of employees employed by Microsoft Corporation ("Microsoft") in California.

You received this notice because records show that you were an employee who worked at Microsoft in California and took one or more leaves of absence protected by California and/or federal law from May 13, 2017 to [entry of the Consent Decree]. This means that you are a part of the group of people potentially covered by the Consent Decree, called the "Covered Workers."

This notice gives you a summary of the terms of the Consent Decree, explains what rights Covered Workers have, and helps Covered Workers make informed decisions about what action they can take.

Enclosed with this notice is a settlement check being offered to you in exchange for a release of certain claims you may have that CRD sought to advance on your behalf and on behalf of the group of Covered Workers in this lawsuit. The release of claims form is also enclosed. If you accept this offer by cashing or depositing the enclosed check, you are agreeing to the terms of the enclosed release form, which means that you forfeit your right to initiate your own lawsuit for the released claims.

This notice is an important legal document, and we recommend that you read all of it. If you have questions or need assistance, please go to [Administrator website] or call [Administrator phone number].

What do I do next?

Read this notice to understand the Consent Decree. Then, decide if you want to:

RECEIVE	Cash or deposit the enclosed check. You will be bound
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PAYMENT	by the settlement described in the Consent Decree.
DO NOTHING	Do not cash or deposit the enclosed check and obtain no payment. You will not be bound by the settlement described in the Consent Decree.

Read on to understand the specifics of the Consent Decree and what each choice would mean for you.

Learning About the Lawsuit

What is this lawsuit about?

CRD has investigated allegations that Microsoft engaged in unlawful employment practices related to protected leaves of absence in violation of California and federal law.

Microsoft denies that it engaged in any unlawful conduct. The parties agree the Consent Decree is not a finding or admission of wrongdoing.

This lawsuit was filed to resolve the case under the supervision of a judge.

Where can I learn more?

You can get a complete copy of the full Consent Decree, including CRD's complaint, and other key documents in this lawsuit by visiting:

[\[INSERT LINK\]](#)

Learning About the Settlement

Why is there a settlement in this lawsuit?

The Court has not decided this case in favor of either side. In [Insert month] 2024, before the lawsuit was filed, the parties agreed to settle, which means they reached an agreement to resolve CRD’s claims from its investigation into Microsoft. The settlement agreement is memorialized in a document called the Consent Decree [link]. Both sides want to avoid the risk and expense of further litigation. The settlement is on behalf of CRD and any Covered Worker who cashes or deposits their settlement check.

What is a Consent Decree?
A consent decree is a type of settlement agreement that resolves a case under the supervision of a judge. It can provide money and sometimes changes to the practices that caused harm in the first place.

What does the settlement provide?

Microsoft agreed to pay \$14,200,000.00 into a settlement fund. This money will be divided among the Covered Workers as described below (see “How was my payment calculated?” on page 8) and will also be used to pay for the cost of administering this settlement.

Covered Workers who cash or deposit their enclosed check will release their claims as part of the settlement, which means they cannot sue Microsoft for the same issues in this lawsuit. The full terms of the release are enclosed with this notice.

The settlement also includes a separate amount of \$225,000.00 to settle CRD’s claim for attorneys’ fees and costs.

In addition, Microsoft has committed to provide enhanced training to its managers and human resources personnel concerning leaves of absence protected by California law generally and in connection with its Annual Rewards process. The parties have also agreed to engage a third-party consultant who will evaluate Microsoft’s leave-related policies/guidelines in connection with (i) the determination of “impact” and recommending Rewards Outcomes to ensure that these

policies/guidelines consistently and expressly state that the time an employee is on protected leave shall not be counted against that employee in evaluating that employee's impact; (ii) the calculation of bonus eligible salary (BES), and (iii) the investigation of employee complaints. The third-party consultant will recommend possible improvements.

How do I know if I am part of this settlement?

If you were an employee of Microsoft in California and took one or more leaves of absence protected by California and/or federal law from May 13, 2017 to [entry of the Consent Decree], you may be a Covered Worker as defined in the Consent Decree and therefore part of this settlement.

Is CRD my lawyer in this lawsuit?

No, CRD is not your lawyer. CRD is a party to the Consent Decree and is the plaintiff in the lawsuit filed in connection with the Consent Decree, and it represents the interests of the State of California, itself, and the public, but it does not specifically represent you or other Covered Workers.

Do I have to pay the CRD lawyers in this lawsuit?

CRD's attorneys' fees and costs are being paid as part of the settlement. You will not need to pay CRD any money.

Deciding What You Want to Do

How do I weigh my options?

You can deposit or cash the enclosed check to receive payment and be bound by the settlement as described in the Consent Decree, or you can do nothing. This chart shows the effects of each option:

	<i>Do nothing</i>	<i>Cash or deposit the enclosed check</i>
Can I receive settlement money if I . . .	NO	YES
Am I bound by the terms of this settlement if I . . .	NO	YES
Can I pursue my own lawsuit if I . . .	YES	NO

Doing Nothing

What are the consequences of doing nothing?

If you do nothing, you will not get any money from this settlement between the government and Microsoft. However, you will also not be bound by the Consent Decree. This means you may be able to start, continue, or be part of any other lawsuit against Microsoft regarding the issues in this case. Please see the Consent Decree, which can be found at [INSERT LINK], for a full description of the claims in this case.

Even if you choose not to participate in the settlement by not cashing or depositing the enclosed settlement check, the injunctive terms in the Consent Decree will still be implemented and will apply to all Microsoft workers for the duration of the Consent Decree.

Accepting the Enclosed Check(s)

What are the consequences of cashing or depositing the enclosed check(s)?

If you cash or deposit the enclosed check within 180 days of the date on which it was issued, you will be bound by the settlement (as described in the Consent Decree) and the enclosed Release of Claims. You will not be able to start, continue, or be part of any other lawsuit regarding the claims released in this government lawsuit through [date of Consent Decree entry]. More information about the claims you will release if you cash or deposit the enclosed check is provided in the enclosed Release form.

If you do not want to be bound by the settlement, do NOT deposit or cash the check.

How was my payment calculated?

Covered Workers each receive a minimum payment. Your check may also include an additional payment amount. Any additional payment amount was calculated solely at CRD's discretion based on several factors, including days worked during the Covered Period, your highest salary during the Covered Period, and your taking of protected leaves of absence during the Covered Period. You can review the determination of these factors as applied to you by accessing the following website: _____ and entering the following unique identifier: _____.

If you believe any of the information on that website is incorrect or have other questions regarding how your payment was determined, please contact the Settlement Administrator at _____.

Potential Second Payment

Might I receive more money than the enclosed check?

Possibly. Any money that is not accepted by Covered Workers by the deadline (within 180 days of the check's date) will be redistributed

through a second payment to all Covered Workers who accepted this first payment. That second payment will be made proportionately to all Covered Workers who accept their first payment, consistent with the Consent Decree.

Not Participating

What if I don't want to be part of this settlement?

You do not have to be part of this settlement.

If you do NOT cash or deposit the enclosed settlement check, you will not be a part of the settlement or receive payment. You will not be bound by this settlement and may be able to file your own lawsuit.

IMPORTANT: There are strict time limits for pursuing legal claims by filing an administrative complaint or a lawsuit. For employment discrimination claims under the Fair Employment and Housing Act (or FEHA), except in special and rare circumstances, an employee must file an administrative complaint with the California Civil Rights Department within three years from the date they were harmed. The time limit to file an employment discrimination administrative complaint with the federal Equal Employment Opportunities Commission (EEOC) for federal employment discrimination claims is three hundred (300) days from the date they were harmed. You may wish to consult an attorney to discuss your legal options.

Key Resources

How do I get more information?

This notice is a summary of the settlement contained in the Consent Decree. The complete Consent Decree with all its terms can be found [here](#). To get a hard copy of the Consent Decree or get answers to your questions:

- visit the case website maintained by CRD at [insert link]
- visit the case website maintained by the Settlement Administrator at [insert link]
- access the [Insert court record system link] online or by visiting the Clerk's Office of the Court (address below).

California Civil Rights Department	California Civil Rights Department Call CRD at (833) 525-4333 Email CRD at [insert Microsoft specific email address]
Settlement Administrator	Settlement Administrator [Insert Address] [Insert Phone Number]
Court (DO NOT CONTACT)	Superior Court of California, County of Santa Clara 191 N. First Street San Jose, CA 95113

EXHIBIT B

**INDIVIDUAL RELEASE OF CLAIMS IN
GOVERNMENT ENFORCEMENT ACTION**
California Civil Rights Department v. Microsoft Corporation
Case No. [XXX]

This Release of Claims (“Individual Release”) is a binding legal document.

Pursuant to this Individual Release, you agree to release certain claims you may have against Microsoft Corporation (“Microsoft”) in return for accepting money from Microsoft (“Monetary Relief”), if you choose to participate in a settlement between the California Civil Rights Department (“CRD”) and Microsoft.

Through a Consent Decree, the California Civil Rights Department (“CRD”) will resolve legal claims stemming from an investigation it pursued against Microsoft, on your behalf and on behalf of other workers who took a Covered Leave of Absence (as defined in the Consent Decree), in exchange for Microsoft’s agreeing to monetary and injunctive relief. CRD’s legal claims are included in a lawsuit it filed as part of the Consent Decree entitled *California Civil Rights Department v. Microsoft Corporation*, Case No. [XXX] (the “Action”). The Consent Decree (enclosed with this notice packet and available at [Settlement Administrator’s web portal]) is the settlement agreement between CRD and Microsoft (“Settlement”). You should take sufficient time to carefully review these documents, including this Individual Release, and to discuss them with others, including a personal attorney if you choose. No one can pressure you into agreeing to the terms in this Individual Release.

To fully participate in this Settlement, you must cash or deposit the enclosed settlement check within 180 days of the date of mailing, and thereby release certain claims you may have against Microsoft. Releasing a claim means that you choose to forgo the possibility of bringing your own lawsuit against Microsoft, and also forgo the possibility of participating in another group action against Microsoft, for the claims you will release if you choose to participate in this Settlement. Those claims are listed below.

If you choose to fully participate in the Settlement by cashing or depositing the enclosed settlement check, you will fully and finally release Microsoft, including each of its past, present, and future successors, subsidiaries, parents, holding companies, related or affiliated companies and divisions, assigns, joint ventures, both individually and in their official capacities, and with respect to each such entity, all of its past, present, or future shareholders, owners, officers, directors, employees, agents, administrators, servants, representatives, attorneys, insurers, re-insurers, fiduciaries, successors and assigns, and any individual or entity who could be jointly liable, and persons acting by, through, under, or in concert with any of these persons or entities (“Released Parties”), from the state and federal claims asserted in *California Civil Rights Department v. Microsoft Corporation*, Case No. [XXX], that arose from **May 13, 2017, through [entry of Consent Decree]**.

The claims you will release if you cash or deposit the enclosed settlement check include (collectively, “Released Claims”):

- i. Claims for sex-based discrimination relating to the use, requested use, or taking of protected leave arising under the California Fair Employment and Housing Act (Gov. Code, § 12940, subd. (a)) and Title VII (42 U.S.C. § 2000e-2).
- ii. Claims for disability-based discrimination relating to the use, requested use, or taking of protected leave arising under the California Fair Employment and Housing Act (Gov. Code, § 12940, subd. (a)) and the Americans with Disabilities Act (42 U.S.C. § 12112(a), (b)).
- iii. Claims for interference with or retaliation as a result of the exercise of rights to use, request to use, or take protected leave arising under the California Family Rights Act (Gov. Code, § 12945.2, subd. (k), (q)); the Pregnancy Disability Leave Law (Gov. Code, § 12945, subd. (a)(4)); the California Fair Employment and Housing Act (Gov. Code, § 12940, subd. (h)); Title VII (42 U.S.C. § 2000e-3); and the Americans with Disabilities Act (42 U.S.C. § 12203).
- iv. Claims based on the denial of reasonable accommodations relating to the use, requested use, or taking of protected leave arising under the California Fair Employment and Housing Act (Gov. Code, § 12940, subd. (m)); the Pregnancy Disability Leave Law (Gov. Code, § 12945, subd. (a)(3)); and the Americans with Disabilities Act (42 U.S.C. § 12112(b)).
- v. Claims based on Microsoft’s failure to prevent unlawful employment practices relating to the use, requested use, and taking of protected leave arising under the California Fair Employment and Housing Act (Gov. Code, § 12940, subd. (k)).

You understand that in exchange for Monetary and Injunctive Relief as set forth in the Consent Decree (available at [[Claims Administrator’s web portal](#)]), CRD will release its own claims against Microsoft, that arose from May 13, 2017, through [entry of Consent Decree](#)], as set forth in the Consent Decree. You understand that in addition to the enclosed payment, should you choose to accept it, you also may benefit from the Injunctive Relief as specified in the Consent Decree, regardless of whether you choose to participate in the Monetary Relief.

By cashing or depositing the enclosed settlement check, you are fully participating in the Settlement as described in the Consent Decree and agreeing to this Individual Release. You understand that you have had full opportunity to consider and understand the terms and to consult with your advisors and seek legal advice, should you choose to do so. You understand that you are making the choice to freely agree to participate in this Settlement and Individual Release.

If you cash or deposit the enclosed settlement check and there is additional money in the settlement fund after the first distribution, then there is a possibility that you will receive a second payment as further consideration for your agreement to release the Released Claims, proportionately to all Covered Workers who participated in the Settlement by cashing or depositing the first payment, consistent with the terms of the Consent Decree.

You understand that if you cash or deposit the enclosed settlement check and/or any second payment, you are solely responsible for correctly characterizing these payments on your personal income tax returns for tax purposes, and for paying all appropriate taxes due and penalties assessed on any and all amounts paid to you under the Consent Decree. You will also hold Microsoft and CRD free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes.

If you cash or deposit the enclosed settlement check, then you are fully participating in the Settlement and agreeing to this Individual Release.

You are not required to return this form or to sign any other document for your Individual Release or CRD's release to be valid.

As explained in the accompanying Notice, to participate in the Settlement, you must cash or deposit the enclosed settlement check within 180 days of the date of issue. If you do not cash or deposit the enclosed settlement check within 180 days, then the payment will be stopped, you will receive no money from this Settlement, and you will be deemed to have chosen not to participate in the Settlement as described in the Consent Decree.