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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 FRANK D. RUSSO, KOONAN LITIGATION Case No.
24 CONSULTING, LLC, and SUMNER M.
25 DAVENPORT & ASSOCIATES, LLC, on
26 behalf of a similarly situated class,
27 Plaintiff,

COMPLAINT

CLASS ACTION

28 vs.

DEMAND FOR JURY TRIAL

MICROSOFT CORPORATION,

Defendant.

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10 B. MICROSOFT REPRESENTED TO BUSINESS CUSTOMERS IT
 11 WOULD USE THEIR DATA ONLY TO PROVIDE THE SERVICES
 THEY PURCHASED. 12

12 C. MICROSOFT’S REPRESENTATIONS WERE FALSE. 17

13 1. Microsoft shares its business customers’ data with Facebook
 14 and other third parties, without its business customers’ consent. 17

15 2. Microsoft shares its business customers’ data with third-party
 16 developers, without its business customers’ consent. 19

17 3. Microsoft shares its business customers’ data with hundreds of
 18 subcontractors when sharing is not needed to provide the
 19 services, and without requiring the subcontractors to keep the
 data private and secure. 20

20 4. Microsoft uses its business customers’ data to develop and sell
 21 new products and services—and otherwise benefit itself. 21

22 D. MICROSOFT MISREPRESENTS THE SECURITY IT PROVIDES
 23 FOR BUSINESS CUSTOMERS’ DATA. 22

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 25 OTHER BUSINESS CUSTOMERS. 24

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 On behalf of Plaintiffs and the Class 27

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 On behalf of Plaintiffs and the Class 30

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2 et seq. On behalf of Plaintiffs and the Class 33

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1 **SUMMARY OF CLAIMS**

2 1. This is a national class action against Microsoft for misrepresenting its privacy
3 and security practices, violating federal and state law, and illegally sharing and using its
4 business-class Microsoft Office 365 and Microsoft Exchange customers’ data.¹ Contrary to
5 Microsoft’s representations and without its customers’ consent, Microsoft shares its business
6 customers’ contacts and related data with Facebook; shares the content of its business customers’
7 emails, documents, contacts, calendars, and other data with unauthorized third parties for
8 unauthorized purposes; and uses its business customers’ data to develop new products and
9 services to sell to others. Those actions violate the Wiretap Act, 18 U.S.C. § 2511; the Stored
10 Communications Act, 18 U.S.C. § 2702; and the consumer protection and privacy laws of
11 Washington.
12

13 **INTRODUCTION**

14 2. Businesses require privacy and security to protect their data, which includes
15 sensitive information belonging to them, their employees, their customers or clients, confidential
16 business plans and financial projections, and trade secrets.
17

18 3. Knowing this, Defendant Microsoft Corporation has made privacy, security,
19 transparency, and trust the core themes of its marketing efforts for its phenomenally successful
20 Office 365 (now called Microsoft 365) and Exchange Online services.² Like a mantra, Microsoft
21 has repeatedly promised business customers that it will use their content and data exclusively to
22 provide them with the purchased services; that, solely for those purposes, it will share their data
23

24 _____
25 ¹When used in this Complaint, unless the context suggests otherwise, “businesses,”
26 “business customers,” and similar terms include persons and non-governmental entities, including
27 non-profit organizations, that subscribe to or purchase business-class versions of Microsoft Office
28 365 and Microsoft Exchange, as specified in the class definition at ¶ 116, *infra*.

²On April 21, 2020, Office 365 became Microsoft 365. All references to Office 365 in this
Complaint include references to Microsoft 365 as of that date and thereafter.

1 with its subcontractors and certain others only on a need-to-know basis; and that it will never
2 share the customer's data with third parties at all.

3 4. In fact, contrary to its representations, Microsoft has regularly shared—and
4 continues to share—its business customers' data with Facebook and other third parties. The data
5 is shared even when neither the customers nor their contacts are Facebook users. And, once
6 Facebook obtains the data, harmful consequences can follow, as demonstrated by the data-
7 harvesting debacle orchestrated by Cambridge Analytica targeting the 2016 national election,
8 using data obtained by Facebook.

9
10 5. Even when sharing has not been necessary to perform the purchased services,
11 Microsoft has nonetheless shared its business customers' data with hundreds of subcontractors,
12 at least some of which have suffered data breaches and are based in countries known for
13 corporate espionage, such as Russia, China, and Libya.

14
15 6. Microsoft also has routinely used the content of business customers' emails,
16 documents, contacts, calendars, location data, audio files, and video files in order to develop new
17 products and services sold to others; to glean business intelligence; and to otherwise derive
18 commercial benefit.

19
20 7. And Microsoft has falsely represented that Office 365 complies with System and
21 Organization Controls standards 1 and 2, nationally recognized standards designed to assure the
22 security, availability, processing integrity, confidentiality, and privacy of customer data.

23
24 8. Microsoft claims transparency about how it uses data and with whom data is
25 shared. But the company has not fully and openly disclosed its data use and sharing practices to
26 its business customers. To the contrary, Microsoft has misled its customers and failed to obtain
27
28

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