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SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY **Sara Batrez** DEPUTY

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

17 GOOGLE INC. and KAI-FU LEE,

18 Plaintiffs,

19 v.

20 MICROSOFT CORPORATION, and
21 DOES 1 through 20, inclusive,

22 Defendants.

Case No.:

105CV045586

COMPLAINT FOR DECLARATORY
RELIEF (C.C.P. § 1060)

(EXPEDITED TRIAL DATE REQUEST
PURSUANT TO C.C.P. § 1062.3(a))

(COMPLEX CASE C.R.C. 1800(c)(1))

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I. INTRODUCTION

1. Plaintiffs Google Inc. and Kai-Fu Lee seek judicial relief from an overreaching and unlawful non-compete provision drafted by defendant Microsoft Corporation. The State of California has an expressly stated and fundamental public policy against contracts that seek to restrain employees from choosing where they want to work in California. Specifically, Business and Professions Code section 16600 provides, in pertinent part, that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” This public policy extends to contracts regardless of where they are entered into, where the employee seeks to work in California. Google Inc. and Dr. Lee therefore seek a declaration, pursuant to California Code of Civil Procedure section 1060, that the Microsoft Corporation non-compete provision is an unlawful restraint of trade, and thus is invalid, unenforceable, and in violation of fundamental public policy of the State of California. Microsoft Corporation’s efforts to enforce the non-compete provision violate California law and public policy, and constitute an unlawful business practice and an illegal restraint of trade.

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II. PARTIES

2. Plaintiff Google Inc. (“Google”) is a corporation organized under the laws of the State of Delaware and is registered to do business in California, with its principal place of business in Mountain View, California.

3. Plaintiff Kai-Fu Lee (“Dr. Lee”) resides in California and became an employee of Google on July 19, 2005. Prior to that time, Dr. Lee had been employed by defendant Microsoft Corporation.

4. Plaintiffs are informed and believe, and on that basis allege, that defendant Microsoft Corporation (“Microsoft”) is a corporation organized under the laws of the State of Washington and is registered to do business in California, with its principal place of business in Redmond, Washington.

1 5. Plaintiffs are informed and believe, and on that basis allege, that at all material times, all
2 defendants, including DOES 1 through 20, and each of them, were the agents, co-conspirators,
3 employees, officers, principals or representatives of each of the other defendants herein; that in doing
4 the things hereinafter set forth, defendants were acting within the course and scope of such
5 relationship; and that plaintiffs' losses as herein alleged were proximately caused by the conduct of all
6 defendants.

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8 **III. BACKGROUND**

9 6. Google was formed in the Silicon Valley in 1998, and has its world headquarters in
10 Mountain View, California. Google's mission is to organize the world's information and make it
11 universally accessible and useful.

12 7. More than 2,500 Californians are employed within the State of California by Google --
13 approximately two-thirds of Google's workforce worldwide. Moreover, Google employees based
14 outside California regularly collaborate, often in real-time, with Mountain View employees using a
15 variety of methods, including electronic messaging and video conferences. Google's two founders and
16 its Chief Executive Officer work out of Google's Mountain View facility, as well as all of Google's
17 other senior executive officers. Google executives based outside of Mountain View consult on a daily
18 basis with Google's senior executives in California on key decisions.

19 8. Microsoft has significant ties to California. Plaintiffs are informed and believe, and on
20 that basis allege, that Microsoft has California offices in at least Sacramento, San Francisco, Mountain
21 View, Santa Monica, Irvine and San Diego. In addition, as of the filing of this complaint, a search for
22 Microsoft job openings at the microsoft.com web site shows well over one hundred positions of
23 employment to be filled in California.

24 9. Dr. Lee is a computer scientist who holds a doctorate from Carnegie Mellon University
25 and a bachelor's degree in computer science from Columbia University. Dr. Lee is a citizen of the
26 United States. During the period August 2000 through mid-July 2005, Dr. Lee was living and working
27 in the State of Washington for Microsoft as a corporate vice president of Microsoft's National
28 Interactive Services Division. Prior to joining Microsoft, Dr. Lee had been employed by two

1 California companies -- Silicon Graphics, Inc. in Mountain View, California, and Apple Computer,
2 Inc. in Cupertino, California.

3 10. In 1998, Dr. Lee accepted a position of at-will employment at Microsoft, opening an
4 academic research lab for Microsoft in China. In August 2000, Dr. Lee returned to the United States
5 and thereafter signed a form at-will employment agreement, entitled "Microsoft Corporation Employee
6 Agreement," that contained a broad provision titled "Non-Competition & Non-Solicitation" (the
7 "Covenant Not to Compete"). The Covenant Not to Compete provides as follows:

8 While employed at MICROSOFT and for a period of one year thereafter, I
9 will not: (a) accept employment or engage in activities competitive with
10 products, services or projects (including actual or demonstrably
11 anticipated research or development) on which I worked or about which I
learned confidential or proprietary information or trade secrets while
employed at MICROSOFT... .

12 The Covenant Not to Compete also obligated Dr. Lee as follows:

13 If during or after my employment with MICROSOFT I seek work
14 elsewhere, I will provide a copy of this Agreement to any persons or
15 entities by whom I am seeking to be hired before accepting employment
with or engagement by them.

16 Plaintiffs are informed and believe, and on that basis allege, that Microsoft requires all of its employees
17 to sign a Microsoft Corporation Employee Agreement that contains the Covenant Not to Compete.

18 11. In early June 2005, Dr. Lee left Microsoft on sabbatical. On or about July 5, 2005, Dr.
19 Lee informed Microsoft of his intention to resign from Microsoft at the end of this sabbatical, and that
20 he was considering employment with Google. On July 18, 2005, Dr. Lee's last day of employment
21 with Microsoft, he was served with a complaint alleging, *inter alia*, that he had breached his Microsoft
22 Corporation Employee Agreement and violated the Covenant Not to Compete.

23 12. On July 19, 2005, Dr. Lee moved to California to begin his employment at Google and
24 to formally execute his Google employment documents. Dr. Lee's employment with Google, as
25 confirmed in his Google offer letter, is governed by California law. He is currently working in
26 California.

1 13. Dr. Lee holds the position of Vice President, Engineering at Google. Dr. Lee is living
2 in California, is looking for residential housing in Santa Clara County, and is expected to maintain a
3 residence in California throughout his employment with Google. He is also registered to vote in
4 California and is obtaining a California Driver's License. California income and payroll taxes are
5 being paid by Dr. Lee and Google on wages earned by Dr. Lee. California taxes will continue to be
6 withheld from future wages and other compensation that is paid by Google to Dr. Lee in California.
7 Dr. Lee is in the process of selling both his residential and income property in the State of Washington.
8 He currently has two California mailing addresses, one for his personal mail and the second for
9 business mail. Dr. Lee also has new telephone numbers for both his work-related and personal
10 telephone calls, both with Santa Clara County area codes.

11 14. The Covenant Not to Compete is unenforceable under California law. Microsoft's
12 efforts to enforce the Covenant Not to Compete violate California law and public policy, and constitute
13 an unlawful business practice and an illegal restraint of trade.

FIRST CAUSE OF ACTION

(Declaratory Relief -- C.C.P. § 1060 -- By All Plaintiffs)

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17 15. Plaintiffs incorporate herein by reference paragraphs 1 through 14 above, as if set forth
18 in full.

19 16. Microsoft has filed a lawsuit against Google and Dr. Lee asserting that Google and Dr.
20 Lee are in violation of and have breached the Covenant Not to Compete.

21 17. Microsoft's assertions are hampering Google's ability to pursue and expand its
22 business, and are interfering with Dr. Lee's right and ability to carry out the duties and responsibilities
23 of his employment with Google.

24 18. Google and Dr. Lee contend that the Covenant Not to Compete is invalid and
25 unenforceable as a matter of law under California Business and Professions Code section 16600, and
26 other provisions of California law. Business and Professions Code section 16600 provides, in pertinent
27 part, that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or
28 business of any kind is to that extent void." Business and Professions Code section 16600 is a

1 component of Chapter 1 (“Contracts in Restraint of Trade”) of Part Two (“Preservation and Regulation
2 of Competition”) of Division Seven (“General Business Regulations”) of the Business and Professions
3 Code.

4 19. The Microsoft Corporation Employee Agreement, which contains the Covenant Not to
5 Compete, also provides that it is governed by the laws of the State of Washington, and that venue for
6 any action arising out of that agreement shall be in a state or federal court located in King County,
7 Washington. The laws of the State of Washington relating to contract provisions such as the Covenant
8 Not to Compete are in fundamental conflict with California law. The State of California has a
9 materially greater interest than the State of Washington in having its laws applied to decide the
10 enforceability of the Covenant Not to Compete (a) because of the strong public policy in California in
11 favor of free mobility of employees and against provisions restraining anyone from engaging in any
12 lawful profession, trade, or business, and (b) because the Covenant Not to Compete is interfering with
13 the California-based employment relationship between Google and Dr. Lee.

14 20. An actual, present, and justiciable controversy has arisen between plaintiffs and
15 defendants concerning the enforceability of the Covenant Not to Compete.

16 21. Plaintiffs desire a judicial determination and declaration that this case may properly
17 proceed in California, that California law governs the enforceability of the Covenant Not to Compete,
18 and that the Covenant Not to Compete is invalid and unenforceable under California law.

19 **IV. PRAYER**

20 WHEREFORE, plaintiffs pray for relief against defendants as follows:

- 21 1. For a declaration by the Court that this case may properly proceed in California, that
22 California law governs the enforceability of the Covenant Not to Compete, and that the Covenant Not
23 to Compete is invalid and unenforceable against Google or Dr. Lee;
 - 24 2. For costs of suit incurred herein; and
 - 25 3. For such other and further relief as this Court may deem to be just and proper.
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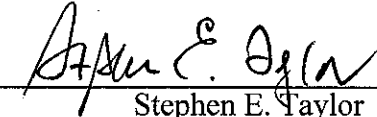
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REQUEST FOR EXPEDITED TRIAL DATE

Plaintiffs hereby request an expedited trial date pursuant to California Code of Civil Procedure section 1062.3.

Dated: July 21, 2005

TAYLOR & COMPANY LAW OFFICES, INC.

By: 
Stephen E. Taylor

Attorneys for Plaintiffs
GOOGLE INC. and KAI-FU LEE