

1 I. PROLOGUE

2
3 Plaintiff Edward Michael O'Brien herein states *prima facie*
4 complaint and claim for damages based on Defendant Adobe
5 Systems, Inc.'s liability for exclusive dealing, obvious after
6 first reading of *End User Licensing Agreement For Adobe Reader*
7 at Section 3., 3.1 ("EULA1"), *End User Licensing Agreement For*
8 *Adobe Flash Player* at Section 3., 3.1 ("EULA2"), and *End User*
9 *Licensing Agreement For Adobe Shockwave Player* at Section 3.,
10 3.1 ("EULA3"). [<http://www.adobe.com/products/eulas/>]
11
12

13
14 Defendant ADOBE used monopoly power in PDF markets to restrain
15 Mr. O'Brien's trade and competition in the digital video/audio
16 market and the digital multimedia market which were integral in
17 a certain area of commerce where ADOBE monopolized and
18 restrained trade and competition by dealing exclusively.
19

20
21 Unlawful exclusive dealing in the PDF reader and digital media
22 player markets compelled consumers to use *Microsoft Windows XP*
23 that bundled *Windows Media Player*. *XP* did not support
24 plaintiff's products and, consequently, restrained purchases of
25 same when former, and would-be, customers decided download of
26 another media player into their computer was too inconvenient,
27 expensive or otherwise problematic.
28

1 Use of monopoly power in the Portable Document Format (PDF)
2 reader market and in the digital animation and digital
3 multimedia producer and player markets by Adobe Systems, Inc.
4 ("ADOBE") to advance monopolization in certain other markets was
5 intended to increase revenues for ADOBE and Microsoft
6 Corporation ("MS") at the expense of numerous persons including
7 Plaintiff O'Brien ("PLAINTIFF") who was a competitor in the
8 digital video/audio media ("DVAM") and digital multimedia
9 ("DMM") markets.
10

11
12 Defendant's compulsion of *MS Windows XP* usage via certain media
13 player restrictions inter EULAs noted above injured the
14 plaintiff when consumers submitted to ADOBE's exclusionary deals
15 for *Adobe Reader*, *Adobe Flash Player* and *Adobe Shockwave Player*
16 and changed their computer operating systems to *Windows XP*.
17

18
19 Defendant also injured the plaintiff when EULAs prohibited
20 consumers wanting to download *Adobe Reader*, *Adobe Flash Player*
21 and *Adobe Shockwave Player* (called "Runtimes" in EULA1 and "Web
22 *Players*" in EULA2 and EULA3) from using *Adobe Flash Player* and
23 *Adobe Shockwave Player* to play plaintiff's products on mobile
24 devices, non-PC computers, Tablet PCs and Media Center PCs not
25 operated by *MS Windows XP*.

26 When, as a condition for download of "free" *Adobe Reader*,
27 *Adobe Flash Player* and *Adobe Shockwave Player*, defendant, inter
28

1 EULAs, proscribed use of its digital media players in all mobile
2 devices, non-PC computers, Tablet PCs and Media Centers PCs not
3 operated by *Windows XP Tablet PC Edition*, and/or *Windows XP*
4 *Media Center PC Edition*, Adobe Systems, Inc. dealt exclusively
5 and unlawfully and caused antitrust injury when consumers,
6 needing *Adobe Reader*, *Adobe Flash Player* and/or *Adobe Shockwave*
7 *Player* stopped/deferred purchases of plaintiff's digital media
8 (.swf and .dcr files) produced for play on most computer systems
9 including PCs, mobile devices, non-PCs, tablets and media
10 centers.
11

12
13 Defendant's unlawful dealing injured Mr. O'Brien when
14 consumers, wanting to download *Adobe Reader* and/or Runtimes (Web
15 Players) but using Tablet PCs and/or Media Center PCs operated
16 by non-MS systems, switched to *Windows XP* and deferred purchases
17 of PLAINTIFF's products because MS bundled only *Windows Media*
18 *Player* in *XP* and time/memory consumption and otherwise
19 problematic download of additional player(s) was required for
20 purchase/play of PLAINTIFF's digital media in *XP*.
21
22

23 ADOBE clearly intended, via monopoly power, to restrain
24 competition in certain PC operating system markets and in the
25 digital video/audio encoder ("DVAE") and the digital video/audio
26 player ("DVAP") markets dominated by Microsoft Corporation.
27
28

1 Defendant clearly intended to, and did, restrain sales of
2 products produced on Real Networks, Inc. ("REAL") software in
3 the DVAM market because those products were competitive with
4 digital media developed by persons, especially professional
5 developers, who purchased and/or used ADOBE and MS software. As
6 stated, digital media produced on REAL software could not be
7 played on *Windows XP* without download of another media player.

8 Mr. O'Brien's economic injury was antitrust injury because
9 ADOBE's questionable exercise of monopoly power directly and
10 proximately impacted certain *target areas* where plaintiff was a
11 competitor.

12 "Claimant has standing to sue under sec. 4 of Clayton Act (15
13 USCS, sec. 15) if he can show himself within sector of economy
14 in which antitrust violation threatened breakdown of competitive
15 conditions, sector sometimes designated 'target area' of
16 defendant's illegal practices, and that he was proximately
17 injured thereby." *South Carolina Council of Milk Producers, Inc.*
18 *v Newton* (1966, CA4 SC) 360 F2d 414, 1966 CCH Trade Cases, sec.
19 71742, cert den 385 US 934, 17 L Ed 2d 215, 87 S Ct 295.

20 Mr. O'Brien was directly and proximately injured by ADOBE's
21 conduct that intentionally restrained interstate trade, commerce
22 and competition in a certain target area even though the
23 plaintiff was not a competitor in markets monopolized by ADOBE
24 and MS.

25 "Although it is not necessary that plaintiff should have been
26 himself engaged in interstate commerce, he must show direct
27 relation between illegal restraint on interstate commerce and
28

1 injury for which he claims damages." Sullivan v Associated
2 Billposters & Distributors (1919, DC NY) 272 F 323.

3
4 II. DEFINITIONS

5
6 **Adobe Runtime** : "Adobe Flash Player, Shockwave Player and
7 Authorware Player (collectively, Adobe AIR and the Flash,
8 Shockwave and Authorware players are the 'Adobe Runtimes'"
9 [ADOBE SYSTEMS, INC. - Warranty Disclaimer and Software License
10 Agreement, Part II, sec. 1. Definitions]
11

12 **PDF format** : "(Portable Document Format) is the de facto
13 standard for document publishing from ADOBE. On the Web, there
14 are countless brochures, data sheets, white papers and technical
15 manuals in the PDF format.
16

17 **Adobe Reader**, formerly *Acrobat Reader*, is ADOBE's free
18 download for displaying and printing PDF files and hundreds of
19 millions of users have downloaded this software from
20 **www.adobe.com**. Adobe Reader historically let computer operators
21 view and print PDF files, but not create or edit them. Starting
22 with *Acrobat 7* and *Adobe Reader 7*, users can manipulate (edit)
23 certain PDF files.
24

25 **Adobe Acrobat** can convert a wide variety of document types on
26 Windows, Mac and Unix to the PDF format. Non-Adobe products are
27 also available for converting documents to PDF; for example,
28

1 Jaws PDF Creator from Global Graphics Software:
2 (www.globalgraphics.com).

3 Adobe's applications such as *InDesign* and *Illustrator*, as well
4 as non-Adobe applications, include PDF converters to export con-
5 tent to the PDF format. "

6 [Ibid., <http://dictionary.zdnet.com/index.php?d=PDF>]
7

8 **Windows Media Player (WMP)** is a [digital media player](#) and media
9 library application developed by [Microsoft](#) that is used for play
10 of [audio](#) and/or [video](#) and viewing [images](#) on personal computers,
11 Pocket PCs and Windows Mobile devices running the Microsoft
12 Windows operating system. Editions of *Windows Media Player* were
13 also released for [Mac OS](#), [Mac OS X](#) and [Solaris](#) but development
14 of these has since been discontinued.
15
16

17 **Mobile Device:** also known as cellphone device, handheld
18 device, handheld computer, "Palmtop" or simply handheld is a
19 pocket-sized computing device, typically having a display screen
20 with [touch](#) input or a miniature keyboard.
21

22 **Non-PC computer:** set top boxes (STB), web pads, tablets, game
23 consoles, TVs, DVD players, electronic billboards or other
24 digital signage, internet appliances or other internet-connected
25 devices, PDAs, medical devices, ATMs, telematic devices, gaming
26 machines, home automation systems, kiosks, remote control
27
28

1 devices, or any other consumer electronics computer or device
2 not a PC.

3 **Multimedia:** The term is used in contrast to *media* which only
4 utilize traditional forms of printed or hand-produced methods.
5 Multimedia includes a combination of [text](#), [audio](#), [still images](#),
6 [animation](#), [video](#), and [interactivity](#) content forms.
7

8
9 Multimedia is usually recorded, played, displayed or accessed
10 by [information content](#) processing devices, such as computerized
11 and electronic devices. It can also be part of a live
12 performance.
13

14 **Open Source :** "Refers to software that is distributed with its
15 source code so that end user organizations and vendors can
16 modify it for their own purposes. Most open source licenses
17 allow the software to be redistributed without restriction under
18 the same terms of the license. For the complete, official
19 definition of open source, visit www.opensource.org/docs/osd.
20 For a list of approved open source licenses, visit
21 www.opensource.org/licenses.
22

23
24 There are thousands of open source programs, and although they
25 are used on most platforms, they are particularly common in the
26 Unix world. Major examples are the [Linux](#) operating system,
27 [Apache](#) Web server and [JBoss](#) application server.
28

1 A great amount of open source software is available at no
2 charge and many open source projects are developed by a
3 community of volunteers. However, there are commercial vendors
4 that enhance open source software and charge a fee, the most
5 notable example being the distribution of Linux ."

6 [<http://dictionary.zdnet.com/index.php?d=open+source>]
7

8 The .pdf file format, although invented by Adobe Systems,
9 Inc., has been *Open Source* for many years.
10

11 III. GROUNDS FOR CAUSE 12

13 Adobe Systems, Inc.'s tender of extremely valuable *Adobe*
14 *Reader, Adobe Flash Player* and *Adobe Shockwave Player* to persons
15 on the internet in exchange for their personal information and
16 formal agreement with noted EULAs constituted discount sales.
17

18 Defendant's sales and sales methods violated Title 15, United
19 States Codes, Section 2 and 14.
20

21 Mr. O'Brien did not formally complain to this court until he
22 discovered ADOBE'S exclusive dealing had a day-to-day deleterious
23 effect on company revenues.
24

25 EULA threat caused plaintiff's former and would-be customers
26 to refrain from purchasing certain products. Specifically,
27 consumers who owned Tablet PCs, Media Center PCs and certain
28

1 mobile devices and non-PC computers (mobile phones, hand-held
2 devices, etc.) were precluded from use of *Adobe Shockwave* if
3 unwilling, or unable, to use *Windows XP* and they were prohibited
4 from facile use of *Real Media Player* if willing to use *XP*.

5
6 Exclusionary policy effectively foreclosed sales of software
7 competitive with *MS Media Encoder* including *Real Producer*, *Real*
8 *Producer Plus*, *Real Media 10* and *QuickTime Media Producer*.

9
10 Plaintiff's products, for sale on the internet since 2002,
11 were developed using Macromedia, Inc.'s *Macromind Flash*,
12 *Macromind Director*, *Real Producer*, *Real Producer Plus* and *Real*
13 *Media 10* and required *Adobe Flash Player*, *Adobe Shockwave Player*
14 and *Real Media Player*, or a number of other non-MS players, that
15 supported .dcr, .swf, .rm, .ra, .rmvb, .ram, .smil, and .smi
16 files.

17
18 Restraint of media player usage via compel of *Windows XP*,
19 restrained trade and competition and caused damages (and
20 disruption) in markets where PLAINTIFF was competitive.

21
22 Thousands of general public consumers, professionals,
23 businesses and government agencies, interstate and globally,
24 download and use the essential *Adobe Reader*, *Adobe Flash Player*
25 and *Adobe Shockwave Player* pursuant to formal agreement with
26 noted EULAs.
27
28

1 Certain few consumers, personally known to the plaintiff, and
2 many other consumers refused to jeopardize themselves by
3 violating EULAs in order to purchase and/or play plaintiff's
4 products.

5
6 Defendant's restraint of plaintiff's interstate and worldwide
7 trade and competition was clearly intentional. Antitrust injury
8 was direct and proximate.

9
10 PLAINTIFF did not discover any evidence that MS expressly, or
11 impliedly, contracted with, or otherwise agreed with, ADOBE to
12 monopolize, exclusively deal or otherwise restrain trade or
13 competition in any market.
14

15
16 IV. BACKGROUND FOR CAUSE

17
18 Adobe Systems, Inc. has long enjoyed monopoly in the market
19 for publication of internet documents in the *Portable Document*
20 *Format*.

21 Because the vast majority of authoritative, higher quality
22 documents for internet distribution are published on *Adobe*
23 *Acrobat*, and because *Acrobat* productions require *Adobe Reader*
24 for optimal decipher, ADOBE has monopoly power to compel most
25 would-be readers of PDF documents on the internet comply with
26 EULA1 before download of *Adobe Reader*.
27
28

1 To circumvent breach-of-contract liability, downloaders of
2 *Adobe Reader* must formally agree not to use *Adobe Flash Player*,
3 *Adobe Shockwave Player* or *Adobe Authorware Player* to play
4 digital media files in all mobile devices and other non-PC
5 devices and in Tablet PCs and Media Center PCs when other than a
6 Microsoft operating system is used.

7
8 When ADOBE bought Macromedia, Inc. in 2005 it appropriated
9 Macromedia's server (code) for play of all .dcr files (*Director*
10 *Shockwave* movies) on computers accessing the internet.

11 ADOBE also acquired *Macromedia Flash Player* and *Macromedia*
12 *Shockwave Player* for play of .swf and .dcr files (*Flash* and
13 *Shockwave* movies) on computers online or off.

14
15 After 2005, users needed *Adobe Flash Player* and *Adobe*
16 *Shockwave Player* to play *Flash* movies and *Shockwave* movies.

17 Today, .dcr files developed and published on the internet, or
18 otherwise distributed before 2005, must be played on *Adobe*
19 *Shockwave Player*.

20
21 Macromedia's *Shockwave Player* no longer exists. If consumer
22 loses right to use *Adobe Shockwave Player* he/she cannot legally
23 view .dcr files produced before or after 2005 even though files
24 play via macromedia codebase and pluginspace URL now ADOBE's
25 property.

26
27 Via antitrust questionable acquisition, defendant now obtains
28 unauthorized advertisement and linkage to its website.

1
2 Hosted by Angelfire.com and sold continuously on the internet
3 since 2005 at http://www.saviorg.com/ssd_Shockwave.html, SAVIORG
4 product entitled "STAY" on the drop-down menu contains on the
5 page accessed after clicking on "click" (Frog) a tab, fourth
6 from the left of interface, that links users to another website.

7
8 Although PLAINTIFF created link to access the Macromedia,
9 Inc. "Showcase" webpage in 2005, today same tab/link routes
10 customers to ADOBE's "Customer Showcase" webpage without our
11 authorization or ability to modify.

12 PLAINTIFF also produced and sold Flash movies (.fla and .swf
13 files) produced on Macromedia, Inc.'s *Flash* program before 2005.

14
15 Many persons, worldwide, read the EULAs and decided they could
16 not legally use Adobe Runtimes in their mobile devices.
17 Countless times, since EULAs were first published, consumers,
18 wanting download of *Adobe Reader*, *Flash Player* or Shockwave
19 Player, decided .dcr and .swf files were not desirable for play
20 on their mobile devices, non-PC computers and/or Tablet PCs and
21 Media Center PCs.

22
23 Day-after-day and year-after-year, ADOBE inexorably increased
24 its own and MS monopolies via exclusive dealing in the PDF
25 reader and Adobe Runtimes markets.
26
27
28

1 Does ADOBE share in MS profits? Does ADOBE own a lot of MS
2 stock? Equitable adjudication of this case will discover answers
3 to these important questions.
4

5 " End-User License Agreement for Adobe Reader

6 **NOTICE TO USER:** PLEASE READ THIS CONTRACT CAREFULLY. BY USING, COPYING OR
7 DISTRIBUTING ALL OR ANY PORTION OF THE ADOBE SOFTWARE ("SOFTWARE") YOU
8 ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, IN
9 PARTICULAR THE LIMITATIONS ON: USE CONTAINED IN SECTION 2; TRANSFERABILITY IN
10 SECTION 4; WARRANTY IN SECTION 7; AND LIABILITY IN SECTION 8. YOU AGREE THAT
11 THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT
12 SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL
13 ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED. IF YOU DO
14 NOT AGREE, DO NOT USE THIS SOFTWARE.

15 **3. Obligations and Restrictions.**

16 3.1 Adobe Runtime Restrictions. You may not use any Adobe
17 Runtime on any non-PC device or with any embedded or device
18 version of any operating system. For the avoidance of doubt, and
19 by example only, you may not use an Adobe Runtime on any (a)
20 mobile devices, set top boxes (STB), handhelds, phones, web
21 pads, tablets and Tablet PCs that are not running Windows XP
22 Tablet PC Edition, game consoles, TVs, DVD players, media
23 centers (excluding Windows XP Media Center Edition and its
24 successors), electronic billboards or other digital signage,
25 internet appliances or other internet-connected devices, PDAs,
26 medical devices, ATMs, telematic devices, gaming machines, home
27 automation systems, kiosks, remote control devices, or any other
28 consumer electronics device, (b) operator-based mobile, cable,

1 satellite, or television systems or (c) other closed system
2 devices." [End User License Agreement For Adobe Reader : Section
3 3.,3.1http://www.adobe.com/products/eulas/pdfs/Reader_AIR_WWEULA
4 [-Combined-20080204_1313.pdf](http://www.adobe.com/products/eulas/pdfs/Reader_AIR_WWEULA)]
5

6 ADOBE injured PLAINTIFF when former and would-be purchasers of
7 PLAINTIFF'S digital media products were dissuaded from purchases
8 via monopoly power unlawfully exercised by ADOBE with EULAs
9

10 Claims for mistake or inadvertence will not effectively defend
11 ADOBE in this case. Although Section 3.1 has been in EULAs for
12 many years, latest version(s) were promulgated no more than six
13 months ago, soon after PLAINTIFF began writing this complaint on
14 computers at UCSB.
15

16 New version(s) are word-for-word with older versions except
17 for replacement of "Web Players" with "Adobe Runtime" in EULA1.
18

19 Older version copied below.
20

21 **"3. Restrictions.**

22 3.1 Web Player Prohibited Devices. You may not Use any Web Player
23 on any non-PC device or with any embedded or device version of
24 any operating system. For the avoidance of doubt, and by example
25 only, you may not use a Web Player on any (a) mobile devices,
26 set top boxes (STB), handhelds, phones, web pads, tablets and
27 Tablet PCs that are not running Windows XP Tablet PC Edition,
28 game consoles, TVs, DVD players, media centers (excluding

1 Windows XP Media Center Edition and its successors), electronic
2 billboards or other digital signage, internet appliances or
3 other internet-connected devices, PDAs, medical devices, ATMs,
4 telematic devices, gaming machines, home automation systems,
5 kiosks, remote control devices, or any other consumer electronics
6 device, (b) operator-based mobile, cable, satellite, or televis-
7 ion satellite, or television systems or (c) other closed system
8 devices."

10 "Copyright © 2008 Adobe Systems Incorporated. [All rights](#)
11 [reserved](#)."

12 Use of this website signifies your agreement to the [Terms of Use](#)
13 and [Online Privacy Policy \(updated 03-30-2007\)](#)."

14 ADOBE clearly intended, long-term, to exclude Adobe Runtimes
15 from all mobile devices and non-PC computers used by downloaders
16 of *Adobe Reader*.

18 One can only speculate why. Reasonable theory: like ADOBE's
19 advancement of the MS operating system monopoly via monopoly
20 power in PDF readers, advance of *Windows Media Player* was at the
21 heart of defendant's exclusive dealing. *Windows Media Player*
22 plays Flash, Shockwave and Authorware files seamlessly on mobile
23 devices and non-PCs operated by MS software.

25 For many consumers, website search, download, memory
26 consumption, setup and/or "learning curve" mastery of
27 additional player(s) was considered prohibitive for
28

1 purchase/play of plaintiff's products on *Real Media Player* or
2 the like.

3
4 Plaintiff can prove economic injury intentionally inflicted by
5 Adobe Systems when many consumers, who were using a non-MS
6 operating system and needed to use Adobe Runtimes, decided to
7 install *Windows XP* to operate their Tablet PCs and Media Center
8 PCs after reading EULAs and, thereby, deferred purchases of
9 plaintiff's products because separate download, setup and
10 mastery of *Real Media Player*, or similar non-MS player, was too
11 problematic on *Windows XP*.
12

13 Exclusive dealing in restraint of trade and competition by
14 Adobe Systems, Inc. violated the Sherman Antitrust Act (1897)
15 and caused antitrust injury of the type antitrust laws were
16 created and adjudicated to alleviate.
17

18 Defendant's restraint of competition, trade and commerce
19 foreclosed at least \$200,000. of interstate business.
20

21 22 V. RELEVANT MARKET

23 PLAINTIFF's injury from defendant's anticompetitive conduct
24 alleged in this complaint was *antitrust* injury because it
25 occurred in the relevant market.
26

27 "Relevant market is phrase used to describe arena within which
28 strength of competitive forces is measured; it does not

1 necessarily mean selling place." Woods Exploration & Producing
2 Co. v Aluminum Co. of America (1971, CA5 Tex) 438 F2d 1286.

3 Claims for monopolization must declare (specify) illegal use
4 of monopoly power in a *relevant market*. Legal term is singular
5 because "market" can (does in this case) connote one, contiguous
6 area of commercial relations. Area of interaction may encompass
7 not only the market-of-sale but certain closely related markets
8 impacted by same conduct empowered by same monopoly.
9

10 "In order to determine existence of tendency to monopoly in
11 any line of business, area or areas of existing effective
12 competition in which monopoly power might be exercised must
13 first be determined." United States v E. I. Du Pont de Nemours &
14 Co. (1957) 353 US 586, 1 L Ed 2d 1057, 77 S Ct 872.
15

16 There exists no commercially viable substitute for *Adobe*
17 *Acrobat*. Virtually all PDF document publications, like court
18 records, books, articles, guides, statistical analysis and
19 charts and many other forms of high-level content, are rendered
20 in *Adobe Acrobat* and read by *Adobe Reader*. Consumers are well
21 acquainted with and universally demand the format and related
22 applications.
23

24 There exist numerous competitors in the market for PDF readers
25 like *Adobe Reader*. However, ADOBE enjoys 99% market share.
26

27 There exist numerous competitors in markets for software
28 applications that produce and play digital animation, digital

1 multimedia and e-learning content. However, ADOBE enjoys over
2 90% market share in each market.

3 There exist many competitors in markets for digital media
4 (files) compatible with players immediately, or eventually,
5 effective on most computer operating systems. Although most
6 products sold in said markets are unique, artistically,
7 substitution for approximate media is widespread.
8

9 There exist many competitors in the market for digital
10 video/audio producers and players.

11 There exist many competitors in markets for Tablet PCs, Media
12 Center PCs and non-PC operating systems. Numerous operating
13 systems can be substituted for market dominant *MS Windows XP*.
14

15 VI. MONOPOLY POWER

16
17 "Monopoly power is defined as power to control prices or ex-
18 clude competition; existence of monopoly power may be inferred
19 from predominant share of relevant market." *Shavirnoch v Clark*
20 *Oil & Refining Corp.* (1984, CA6 Mich) 726 F2d 291, 1984-1 CCH
21 *Trade Cases* sec. 65832, 38 FR Serv 2d 826.

22 Proof of ADOBE's monopoly power in the relevant market,
23 especially in controlling PDF markets, is not necessary beyond
24 statement of well known facts. Proof of defendant's monopoly
25 power is evidenced by terms in EULAs that require exclusion of
26 ADOBE's competitors and fact EULAs have long been effective
27 tools for defendant's exclusive dealing and monopolization.
28

1 Clearly, the defendant had monopoly power not only in PDF
2 markets but also in markets for PC and non-PC operating systems,
3 digital video/audio encoders and players and digital multimedia
4 producers and players because ADOBE could, emphatically did,
5 substantially exclude competition in those markets.

6 Squelch of *Runtimes* was squelch of media requiring *Adobe Flash*
7 *Player* and *Adobe Shockwave Player*. Crush of REAL was crush of
8 PLAINTIFF. Promulgation of EULAs was international, interstate,
9 daily and hourly exercise of monopoly to exclude competition in
10 numerous closely related markets that included markets where
11 plaintiff struggled to make a living.
12
13
14

15 VII. CAUSE OF ACTION

16
17 Edward Michael O'Brien complains of antitrust injury inflicted
18 by; claims payment of damages from, and brings this action
19 against Adobe Systems, Inc. under Sec. 3 and 4 of the Clayton
20 Act (1914) and Title 15, United States Codes, Section 2, 14 and
21 15.
22

23 VIII. DAMAGES SPECIFIED

24
25 Since ADOBE's acquisition of Macromedia, Inc., PLAINTIFF'S
26 sales of DVAM products decreased markedly. However, total damages
27
28

1 incurred were not as much from revenue loss as from company net
2 worth diminution.

3 PLAINTIFF'S inventory and other assets were conservatively
4 valued at \$3,100,000. in 2005 and decreased to \$1,900,000. in
5 2008.

6 Mr. O'Brien claims payment of damages to business value (sale
7 value) of \$1,500,000. (trebled). Plaintiff also claims damages to
8 revenues over time of cause of action estimated to be \$250,000.
9 (trebled).

10 IX. THEORY FOR CAUSE

11
12
13
14 ADOBE changed EULA1 at Section 3., subsection 3.1 shortly
15 after Plaintiff O'Brien began drafting this complaint. The
16 "Runtime" concept was added, apparently, to mask ADOBE'S
17 exclusive dealing strategy more apparent in EULA2 and EULA3.

18 Runtimes are compatible with many non-windows operating
19 systems. Many users of Linux and other non-MS systems use
20 Runtimes for play of animation, multimedia and e-learning files.

21 Adobe Systems, Inc. intentionally, directly and proximately
22 injured the plaintiff when customers were compelled by EULAs to
23 delay, divert and/or rescind purchases from plaintiff's
24 business.

25 Inflexible demand for unique and completely monopolized
26 software compelled would-be downloaders of same to act in
27
28

1 agreement with EULAs and, thereby, (a) defer purchases and/or
2 play of files incompatible with MS digital media players, (b)
3 defer purchases and play of certain multimedia files, (c) defer
4 purchases of PC and non-PC operating systems competitive with
5 systems sold by Microsoft, and (d) affirm (join with)
6 defendant's pandemic exclusive dealing in violation of the
7 Sherman Act and state antitrust codes.
8

9 PLAINTIFF has been an affiliate (internet publisher) and
10 customer of Real Networks, Inc. since year 2005. He has been a
11 commercial developer/seller of digital media (files) produced on
12 REAL and ADOBE (Macromedia) software since 2002.
13

14 ADOBE's monopolization intentionally decreased REAL's business
15 revenues and, of course, revenues of many developer/sellers
16 whose products were created for play on *Real Media Player* or
17 similar non-MS player.
18

19 Because ADOBE absolutely monopolizes the internet document
20 publishing market with *Adobe Acrobat*, and because PLAINTIFF's
21 legal documents and literature for sale on the internet required
22 *Acrobat* publication, plaintiff was compelled to purchase *Adobe*
23 *Acrobat* (\$600. retail price published on Adobe's website) or
24 subscribe to Adobe Online PDF Services and pay monopoly
25 conditioned pricing for publication of commercially viable,
26 albeit editing restricted, PDF documents.
27
28

1 After publication of several PDF documents and embed of same
2 in Mr. O'Brien's website (html), plaintiff realized in order to
3 read the documents he had to personally download *Adobe Reader*.
4 In order to legally download *Reader*, Mr. O'Brien had to formally
5 accept Adobe's *End-User License Agreement For Adobe Reader*. In
6 process of carefully reading EULA1, Mr. O'Brien discovered facts
7 stated in this complaint that explained certain business set-
8 backs and present cause of action.

10 Millions of persons worldwide obtained *Adobe Reader*, *Adobe*
11 *Flash Player*, *Adobe Shockwave Player* and *Adobe Authorware Player*
12 via download from the ADOBE website. Millions more will obtain
13 same software (or upgrades) in the future.

15 Of past and future millions, many will revisit the ADOBE
16 website to obtain the latest versions. Again, consumers in all
17 walks of life will formally agree with EULAs and, thereby,
18 validate ADOBE's unlawful policy. After their validation, many
19 consumers will subsequently violate EULAs and, presumably,
20 breach law and ethical standards.

22 Potential for private and corporate liability and injury is,
23 absent judicial intervention, unlimited. Millions of consumers
24 own a Tablet PC, Media Center PC, mobile device and/or a non-PC
25 computer. Many declined (will decline) to make purchases of
26 plaintiff's products because they did not use *Windows XP* to
27 operate certain computers or because they refused to
28

1 inconvenience themselves with acquisition of a second media
2 player for use on *Windows XP*.

4 X. RELEVANT MONOPOLIES

5
6 Adobe Systems, Inc. owns ten (10) worldwide monopolies: *Adobe*
7 *PostScript* (**printer drivers**), *Adobe Premiere* (**semi-professional**
8 **digital video editing**), *Adobe Acrobat* (**PDF document publishing**),
9 *Adobe Reader* (**PDF document reading**), *Adobe FLASH* (**animation**
10 **production**), *Adobe FLASH Player* (**animation playback**), *Adobe*
11 *Shockwave* (formerly *Macromind Director*: **multimedia authoring**),
12 *Adobe Shockwave Player* (formerly *Macromind Shockwave Player*:
13 **multimedia playback**), *Adobe Authorware* (**e-learning authoring**) and
14 *Adobe Authorware Player* (**e-learning playback**).

15
16
17 Monopoly power in the **PDF document publishing** and **PDF document**
18 **reading** markets was used by ADOBE to increase monopolies and
19 revenues in numerous other markets - six (6) dominated by Adobe
20 Systems, Inc. and three (3) by the Microsoft Corporation.

21
22 Terms in EULAs are *res ipsa loquitor* evidence for
23 monopolization and restraint of trade and competition via
24 exclusive dealing.

25
26 ADOBE's monopolization via exclusive dealing increased market
27 share and revenues in the **non-animation player** market and in
28 other markets dominated by MS, including the **digital audio/video**

1 **producer** market (*Windows Media Encoder*), the **digital audio/video**
2 **player** market (*Windows Media Player*) and the **Tablet PC** and **Media**
3 **Center PC operating systems** markets (*Windows XP for Tablet PC -*
4 *Windows XP for Media Center PC*).

5 Fact, consumers worldwide having a Tablet PC and/or a Media
6 Center PC not operated by an MS product were precluded from
7 downloading *Adobe Reader* if they intended to use *Adobe Flash*
8 *Player*, *Adobe Shockwave Player* and/or *Adobe Authorware Player*
9 caused economic injury of the type antitrust laws were created
10 to curtail and punish.
11

12 Fact, *Adobe Acrobat* renders incomparable PDF documents
13 compelled many individuals, corporations, government agencies
14 and other authoritative document creators and publishers to use
15 *Acrobat*. Many, if not most, documents from said sources
16 expressly state *Adobe Reader* or *Adobe Acrobat* (bundling *Reader*)
17 must be downloaded into a computer attempting to read *Adobe*
18 *Acrobat* documents.
19
20

21 It is universally understood *Adobe Reader*, inter *Adobe Acrobat*
22 and as a standalone application, has over 99% market share, very
23 low elasticity of demand and no effective substitutes. It is an
24 essential software product globally demanded.
25

26 ADOBE has long and openly admitted a large portion of its
27 business comes from cooperative dealings with Microsoft. As
28 stated above, since its acquisition of Macromedia, Inc. in 2005,

1 ADOBE has enjoyed monopoly (99% market share) in animation and
2 multimedia producer and player markets via *Adobe FLASH* and *Adobe*
3 *Shockwave*.

4 Digital media giant, deriving over 50% of its revenues from
5 contracts with MS and from sales of products that preclude
6 import and/or render of files produced on software competitive
7 with ADOBE and MS products, took action to increase the
8 notorious MS operating system monopoly and the recently acquired
9 MS digital media encoder and player monopolies via exclusive
10 dealing in the PDF reader and media player markets and, thereby,
11 breached Title 15, U.S.C., Sections 2 and 14.
12
13
14

15 XI. STANDING

16
17 Edward Michael O'Brien is a proper person to bring this action
18 because he was a competitor (developer/seller) in the digital
19 video/audio media market and the digital multimedia market and
20 experienced measurable and legally sufficient damages directly
21 from plaintiff's illegal actions in a relevant area of commerce.
22

23 PLAINTIFF is also well experienced in Title 15, section 15
24 litigation of claims against software companies.
25
26
27
28

XII. JURISDICTION

1
2 Because this civil action arises under the laws of the United
3 States of America, this Court has jurisdiction over this matter
4 pursuant to the Sherman Antitrust Act, Title 15 U.S.C., section
5 15 and Title 28 U.S.C., section 1331.
6

7
8 PLAINTIFF was born in Pasadena, California. Birth certificate
9 and valid driver's license were issued by the State of
10 California. Mr. O'Brien is currently registered to vote in
11 California. SAVIORG, plaintiff's corporation, was founded in
12 1990 and operated primarily in California. Mr. O'Brien has done
13 non-profit and for-profit business in California since 1990.
14

15
16 Adobe Systems, Inc. maintains offices; transacts business,
17 and/or is found in the Central District of California within the
18 meaning of 15 U.S.C. sec. 22. ADOBE derives more revenue from
19 sales in California than in any other state. Defendant's home
20 offices are located in San Jose, California.
21

22 Venue is proper in this district under 28 U.S.C., sec. 1391.
23 This action is within time limits because offenses complained of
24 commenced less than four years ago.
25
26
27
28

XIII. PARTIES

1
2 Adobe Systems Incorporated was founded in 1982 and is currently
3 located at 345 Park Avenue, San Jose, California. The company
4 states it was founded on a simple premise: how could text and
5 images on a computer screen translate beautifully and accurately
6 into print?
7

8 Building on this legacy and looking to the future, ADOBE
9 declares itself committed to revolutionizing how the world
10 engages with ideas and information. Under the leadership of
11 Shantanu Narayen, appointed ADOBE's Chief Executive Officer in
12 2007, the company is poised to meet the growing challenge of
13 "enabling customer engagement".
14

15
16 Adobe Systems incorporated

17 Headquarters:

18 San Jose, California

19 *www.adobe.com*

20 Stock Symbol ADBE (Nasdaq): Adobe Fiscal 2006 Revenues US \$2.575
21 billion (FYE Dec. 1, 2006)

22 Edward "Ed" O'Brien is a graduate of the University of
23 California at Santa Barbara and a former Captain (O-3) in the
24 United States Marine Corps (air traffic control specialist:
25 Spirit of America Honor Medal). Mr. O'Brien is the founder of
26 SAVIORG, a California public charity [Title 26 U.S.C., sec.
27 501(c)3 / 509(a)2] and sole-proprietor of SAVICOM, a software
28

1 and website development company established in California and
2 operational worldwide.

3
4 In addition to software and website content, SAVIORG
5 (<http://www.saviorg.com/1>) sells fashionably designed clothing,
6 motion picture scripts, a humor book, a book on taxation and
7 *GOLF COACH*, the first (copyrighted, 1989) software application
8 to enable golfers to acquire, process, analyze and present golf
9 statistics on PC, server and mainframe computers.
10

11 Plaintiff's software, digital media and artwork inventory is
12 valued at \$1,500,000.
13

14 Mr. O'Brien played professional golf on the California Golden
15 State Professional Golf Tour in 1992. He worked as a teacher and
16 tennis coach at Righetti High School in Orcutt, CA and as a
17 minister at Oral Roberts University where he studied multimedia
18 production and implemented *Golf Coach* expressly for the ORU golf
19 team. Mr. O'Brien has produced and sold digital media since year
20 2000. He recently launched *Mobile Poker Tells*, mobile websites
21 in both English and Chinese languages custom crafted for use on
22 *mobile* devices, non-PCs, PCs, Tablet PCs and Media Center PCs.
23 (<http://mpt2.param.mobi>)
24

25
26
27 Mr. O'Brien is currently a resident of Santa Barbara,
28 California and Princeville, Hawaii. Corporate Office: P.O.

1 91003, Santa Barbara, CA 93190, tel 805-252-8990, fax 805-562-
2 8457

3
4 XIV. TRADE AND COMMERCE

5
6 Throughout the period covered by this complaint, Adobe
7 Systems, Inc. and Edward Michael O'Brien conducted business
8 throughout the United States and worldwide. Business restrained
9 as alleged over time of cause of action constituted at least
10 \$200,000. of interstate commerce.
11

12 XV. SUMMARY

13
14 Defendant's monopolization injured plaintiff's business
15 (revenues and company value) that sold digital media produced on
16 Macromedia, Inc. and REAL software because many of plaintiff's
17 customers, and would-be customers, who wanted to download *Adobe*
18 *Reader* and/or *Adobe Runtimes* used mobile devices, non-PCs,
19 Tablet PCs and/or Media Center PCs not operated by *Windows XP*
20 and could not legally use *Runtimes* or *Windows Media Player* to
21 play plaintiff's products.
22
23

24 XVI. CONCLUSION

25
26 ADOBE's antitrust violations threatened and achieved
27 breakdown of competitive conditions not only in its own markets
28

1 but also in a target area of markets where PLAINTIFF was a
2 competitor. Therefore, defendant's illegal practices caused
3 injury to the plaintiff that was direct and proximate.

4 Defendant's exclusive dealing injured the plaintiff when it
5 forced consumers to use *Windows XP* and avoid use of mobile
6 devices and non-PCs not operated by a Microsoft product.

7
8 Adobe Systems, Inc. restrained sales and competition in the
9 digital video/audio market and the digital multimedia market
10 without adding pro-competitive benefits to same when exclusive
11 dealing in PDF reader and Adobe Runtimes markets curtailed sales
12 of digital media produced on Real Networks, Inc. software
13 immediately not playable on *Windows XP*.
14

15 Unlawful dealings in violation of United States Codes, sec. 2
16 and 14, directly and proximately caused economic injury and
17 other injury, including mental distress, to legally disabled
18 plaintiff.
19

20 Same offenses substantially diminished PLAINTIFF's company
21 revenues and overall value.

22 Payment of compensation and other damages (relief) can be
23 justified and ordered by this court.
24

25 XVII. CHARGES

26

27 As alleged above, Defendant Adobe Systems, Inc. injured
28 Plaintiff Edward M. O'Brien when it monopolized certain markets

1 specified herein and, thereby, violated Title 15, U.S.C.,
2 Section 2 for which the penalty is not more than \$100,000,000.
3 nor more than ten (10) years in prison.

4
5 As alleged above, Defendant Adobe Systems, Inc. injured
6 Plaintiff Edward M. O'Brien when it dealt exclusively in certain
7 markets specified herein and, thereby, violated Title 15,
8 U.S.C., Section 14 for which the penalty is not specified in
9 federal statutes but readily discerned in case law.
10

11 XVIII. PRAYER

12
13
14 Plaintiff O'Brien respectfully prays this court award
15 compensatory damages totaling \$5,250,000. and punitive damages
16 totaling \$10,000,000.

17 PLAINTIFF also prays for other relief as the court deems
18 necessary to include additional fine(s) required by statute not
19 to exceed \$100,000,000.
20

21
22
23 Respectfully submitted on December 12, 2008 in Los Angeles,
24 California by
25

26
27
28 _____
EDWARD MICHAEL O'BRIEN

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