EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CALDERA, INC.,
 	
        Plaintiff,
 	
vs.
 	
MICROSOFT CORPORATION,
 	
        Defendant.
	CALDERA INC.'S CONSOLIDATED STATEMENT OF FACTS IN SUPPORT OF ITS RESPONSES TO MOTIONS FOR SUMMARY JUDGMENT BY MICROSOFT CORPORATION
	
	Judge Dee V. Benson
	
	Case No. 2:96CV645B

194256/6691.4663

373.   Even as late as July 30, 1994, presentations were being made by Microsoft personnel indicating that "Chicago" would ship before the end of 1994. *See* **Exhibit 429**. By that time, Microsoft's plans for "Chicago" were omnipresent and effervescent. *See* **Exhibit 426** ("Microsoft: Makes Data on Windows 'Chicago' Available Online Worldwide"); **Exhibit 425**.

374.   Shrouded in the fog of this vaporware, which included representations that Windows 95 would not need DOS to run, *see supra* ¶¶ 339, 359-360, 365, Novell announced in September 1994 that it would withdraw from active development and marketing of further versions of DR DOS. *See infra* ¶ 406. With the pressure finally off, Microsoft issued this statement on December 20, 1994:

> Microsoft Corporation today announced that Windows 95 may not be available until August 1995. The company made this announcement based on its continued commitment to deliver a vigorously tested product of the highest quality.

> **Exhibit 435**

2.   **RETALIATORY TIE — PART 2**

375.   While moving towards the "Chicago" beta test cycle, Microsoft continued to use denial of access to Windows information to punish anyone promoting or associating with DR DOS:

> *Silverberg:*
> I talked to the ceo of insignia at the show. i forget his name, sorry, he was an english guy.
>
> *the issue is that i've heard thru the grapevine that insignia promoted dr dos to apple instead of msdos,* for inclusion in their new machine that has a 486. he was caught off guard by my question and i could see from his reaction that yes, there is truth to this rumor. . . .
>
> *we talked for a bit, and it's clear that they are actively telling oem's about dr dos.* are they promoting dr dos? that's more a matter of judgement but it's clear that they are steering oems to dr dos and letting oem's know drdos is a viable alternative to ms-dos for the cost-sensitive oems (and who isn't cost sensitive).

i let him know that this presented a conflict to us — giving him access to windows source when he is out promoting dr dos instead of ms dos. while we didn't agree on the definition of "promote," *i think he got the message.*

Kruger:
You must have spoke w/ Phil Bousfield. Nick Samuels is no longer the chairman.

Novell is practically giving away DR-DOS. Insignia wants Apple to buy SoftPC.

Silverberg:
Yes, it was Phil Bousfield.

Insignia may not agree that they were "promoting" DR DOS. But Phil agreed that yes they do make sure Insignia runs on DR DOS, that they tell OEMs it runs on DR DOS, and that OEMs can choose whichever they prefer.

I am not going to provide source code to someone who is out there promoting DR DOS.

> Exhibit 395 (emphasis added)

376.   That day, December 2, 1993, Kruger sent a threatening letter to Insigna pertaining to access to Windows code:

I'd like to be very open about a sensitive issue that was brought to my attention.

Specifically, *we are aware that Insignia has been promoting DR DOS to Apple.* I don't believe Apple will bite (excuse the pun), but the fact that Insignia spent what appears to be more than a few cycles treading these waters is big concern for us.

The deal to provide Windows code for SoftPC, and our discussions to revisit MS-DOS and Windows royalties, *are directed at Windows running over MS-DOS.* We know from experience the implausibility of trying to support multiple OS code bases (especially where the installed base/yearly shipments are so trivial) and therefore elected to focus on MS-DOS. *We would expect Insignia to follow suit.*

This subject is even more relevant given Insignia's request for us to deliver Chicago M5 source code in advance of the Chicago beta test period. I would like to comply, but now need to convince Brad Silverberg (VP, Personal Systems) that Insignia's intentions are in line with ours.   *Brad's approval is required for all Windows 3.x/Chicago source code shipments.*

Would it be possible to get a concise letter stating Insignia's position and commitment?

Exhibit 396 (emphasis added)

377.   Microsoft determined to permit access to Windows' information only to OEMs and

ISVs working *exclusively* with MS-DOS. OEMs associating with any other DOS were blacklisted:

Specter:
As we suspected, AST will stand on stage with IBM next week and announce that they will sign a license with IBM for OS/2 and other related products. These other related products will include PC-DOS. They will offer these products only to their customers that request them.

Kempin:
vERY CLEAR TO ME; nO CHICAGO, NO COOPERATION, no beta, no alpha code, total war.

Adler:
Pls add AST to the no-ship list for Chicago & Snowball materials.

Siilverberg:
they should understand that if they ship pcdos, they are at war with us.

Specter:
understood.

Exhibit 356

378.   The retaliatory decision to implement the beta blacklist was made at the highest levels

of Microsoft, and without fear of the size of the corporation involved:

Press Release:
In an effort to create a common framework for interoperability between applications on all desktop platforms, seven industry-leading hardware, software and networking companies have united to form the Component Integration Laboratories (CIL). APPLE COMPUTER, Inc., IBM, NOVELL, ORACLE, TALIGENT, WordPerfect Corporation, and Xerox Corporation participated in the announcement made today at the Windows Solutions Conference here.

"When end-users can access information they need from across an entire enterprise, they will achieve extraordinary gains in productivity," said Dennis Andrews, president of XSoft division of Xerox.

Silverberg:
Here's part of the reason. You'll see XSoft got the first quote and one of the leaders of this effort. There are other reasons, I'll give you a call.

As I mentioned *I discussed the issue with BillG a few weeks ago and he agreed that we should not at this time give xsoft the beta.* CIL was a big part.

Maples:
Called him and told him no deal. Said CIL was the big issue. He said that 75-80% of his business in from Windows and that he felt at a competitive disadvantage. I told him that maybe he should drop out of CIL. Said he did not want to but would consider.

He raddled his saber a little asking if anyone had legally challenged us on betas.

Exhibit 391 at MS7093801-802 (emphasis added)

379.   Microsoft's purpose was clear, as subsequent discussion of the Xerox beta blacklist confirms:

seems like we are being a little paranoid about them. I don't really see them as a systems threat. *I think they have gotten the word that they need to play ball with us.*

Exhibit 405 (emphasis added)

380.   At this point, Novell also approached again to specifically request that Novell be permitted access to the forthcoming Chicago betas to ensure compatibility of future versions of DR DOS. As before, and for the same reasons, the request was denied. **Exhibit 371; Exhibit 372; Exhibit 385.**

381.   In Spring 1994, as "Chicago" entered its beta cycle, Microsoft extorted onerous NDAs that would block independent developers from providing development feedback to Novell for *three years* if they agreed to be a beta site:

1. GRANT OF LICENSE. Microsoft grants COMPANY the right to use the PRODUCT only for the purpose of testing the compatibility of COMPANY's application product(s) which operates in conjunction with the PRODUCT, and for evaluating the PRODUCT for the sole purpose of providing feedback to Microsoft. *The Product shall not be used in the development of a COMPANY product or technology that is competitive with the Product, including the technology known as* OPENDOC, WABI, clones of Windows, and operating system products, including Personal NetWare, *Novell DOS Development (DR-DOS)*, UNIXware.

. . .

4. CONFIDENTIALITY. The PRODUCT is confidential and proprietary to Microsoft and its suppliers.

In no event shall COMPANY disclose the PRODUCT to the development teams of any operating system products, including Personal NetWare, *Novell DOS Development (DR-DOS)*, UNIXware, WABI or other clones of Windows, or any teams that are developing successor operating systems to the foregoing, or to any individual on the development team working on OPENDOC. *In consideration of the license granted herein, for a period of three (3) years COMPANY agrees to prohibit any authorized individuals who have had access to the PRODUCT from participating in the design and/or development, feedback, or guidance of a COMPANY product or technology that is competitive with the PRODUCT, the technology known as* OPENDOC, WABI, clones of Windows, and operating system products, including Personal NetWare, *Novell DOS Development* (DR-DOS), UNIXware, without Microsoft's express written permission.

Exhibit 413 (emphasis added)

382.   By the middle of 1994, even diehard supporters knew to stay far, far away from

DR DOS. *See, e.g.*, Exhibit 354 (letter from Central Point Software to Microsoft: "Going back to

the negotiations of our agreement, you made yourself completely clear that contractually you would

not allow us to do business with DR-DOS, or any third party that shipped DR-DOS on more than

50% of their systems . . . and we have not!").

Exhibit 391
to Caldera's Consolidated Statement of
Facts in Support of Its Responses to Motions
for Summary Judgment

Erik Stevenson

From:	Mike Maples
To:	bradsi
Subject:	RE: xsoft
Date:	Thursday, November 04, 1993 2:54PM

Called him and told him no deal. Said CIL was the big issue. He said
that 75-80% of his business in from Windows and that he felt at a
competitive disadvantage. I told him that maybe he should drop out of
CIL. Said he did not want to but would consider.

He also said that Novell was the big pusher in the deal. Said that
Nagel (Apple) said we were invited.

He raddled his saber a little asking if anyone had legally challenged
us on betas. Also aske if any of the other shell vendors (Norton etc)
were getting betas. Told him I did not think so.

From: Brad Silverberg
To: Mike Maples
Subject: xsoft
Date: Thursday, November 04, 1993 2:24PM

Here's part of the reason. You'll see XSoft got the first quote and one of
the leaders of this effort. There are other reasons, I'll give you a call.

As I mentioned I discussed the issue with BillG a few weeks ago and he
agreed that we should not at this time give xsoft the beta. CIL was a big
part.

From: Jeff Lum
To: bradsi
Subject: INDUSTRY: LEADERS FORM COMPONENT INTEGRATION LABORATORIES TO
DELIVER SOFTWARE INTEROPERABILITY
Date: Wednesday, September 29, 1993 6:16PM

Here it is....

From: Newswire Mailing
To: IS Daily News Services for Executives
Cc: Newswire Mailing
Subject: INDUSTRY: LEADERS FORM COMPONENT INTEGRATION LABORATORIES TO
DELIVER SOFTWARE INTEROPERABILITY
Date: Thursday, September 16, 1993 1:59PM

INDUSTRY LEADERS FORM COMPONENT INTEGRATION LABORATORIES TO DELIVER
SOFTWARE INTEROPERABILITY

  SANTA CLARA, Calif., Sept. 16 /PRNewswire/ -- In an effort to create a
common
framework for interoperability between applications on all desktop
platforms,
seven industry-leading hardware, software and networking companies have
united
to form the Component Integration Laboratories (CIL). APPLE COMPUTER, Inc.
(NASDAQ-NMS: AAPL), IBM, NOVELL, ORACLE, TALIGENT, WordPerfect Corporation
and
Xerox Corporation participated in the announcement made today at the Windows
Solutions Conference here.

The purpose of CIL is to establish, promote, and certify specifications
and
reference implementations of key technologies that integrate information and
media from many applications within a networked environment. It is intended
to
develop certification processes for software products that conform to CIL
specifications and documentation, as well as training for developers
who want to
use CIL technologies. In addition, CIL will serve as a distribution center
for
contributed software, design discussions and technology definition and
evolution.

CIL technology is designed to fundamentally change the way a user
works with a
computer, evolving the focus from application-centered to document-centered
computing. This new architecture allows users to embed feature sets from
different applications into a single working document so that essential
editing
tools are always quickly accessible. Users will be able to integrate
multimedia, three-dimensional models, text, graphics and other types of
information in any application.

"When end-users can access information they need from across an entire
enterprise, they will achieve extraordinary gains in productivity," said
Dennis
Andrews, president of XSoft division of Xerox, "Xerox's commitment to the
document as the basis for information sharing and decision-making leads us
to
understand the importance of early participation of CIL. We believe
our current
and future document management applications will take significant advantage
of
the CIL APIs."

Even though CIL is a newly formed organization, members will have
immediate
access to software architectures that have been completed. Initial CIL
technology will include the following:

-- The OpenDoc software architecture for Windows, OS/2, Macintosh and UNIX
to
enable embedding of features from different applications into a single
working
document.

-- Bento for the storage and interchange of multimedia information.

-- The Open Scripting Architecture (OSA) for the coexistence of multiple
scripting systems.

-- IBM's System Object Model (SOM) architecture, a highly efficient
platform
and language-independent runtime mechanism for dynamic object linking.

"OpenDoc is an exciting foundation that allows developers to move their
existing applications to the compounds document world, and provides
interoperability across Macintosh, OS/2, DOS, Windows and UNIX operating
systems," said David Nagel, senior vice president and general manager
of Apple's
AppleSoft division. "As well, OpenDoc will interoperate with Talent's new
object-oriented operating environment, assuring a smooth path between
OpenDoc

and TALIGENT electronics documents."

"CIL is the outgrowth of individual vendors' efforts towards the development
of compound documents, scripting and automation interfaces and standards for
object interfaces," said Cliff Reeves, director of Object Systems, from IBM's
Personal Software Products (PSP) division. "We see joining CIL and contributing
the SOM technology as an opportunity to leverage and speed this development
cycle."

"We support the goals of CIL and plan to ensure interoperability of its
technologies with the TALIGENT environment," said Michael Potel, vice president
of technology development at TALIGENT. "We believe CIL technologies are an
important step for migrating existing applications to a compound document
architecture. Interoperability will ease the migration from today's procedural
applications to tomorrow's object- oriented solutions on the TALIGENT
platform."

Developers writing to this association's specification will be able to create
plug-and-play applications that can be partitioned into independent components.
As part of CIL they will receive early access to leading-edge technology,
training, co-marketing and technical support. Once their products are ready for
market, they can be tested and certified by CIL indicating that they meet the
software integration standards adopted by industry members. As members,
developers will be able to upgrade and migrate their products as the interface
standards evolve.

"CIL technology provides a new business model for software developers by
letting them exploit their development strengths to bring products to market
more quickly, without spending cycles and resources recreating existing
software," said Jed Harris, Apple's manager of Component Software Alliance
Strategy. "It opens the door for developers to create profitable market niches
while decreasing investment risks."

"CIL technology is ideal for midsized companies with internal developers who
create and manage applications and tools for component integration. These
developers traditionally lack resources to develop the complete technology. At
the same time, they are getting tremendous demand from the end-user for
increased function and interoperability," said Layne Cannon, director of
advanced technologies for WordPerfect Corporation.

Cannon continued, "WordPerfect Corporation's large installed base of small,
midsize and large enterprises, as well as strength and experience in the Windows
environment, brings immediate cross-platform expertise to CIL."

Bento, the Open Scripting architecture, and SOM are currently available from
Apple and IBM and will be made available to members. For more information
regarding membership, contact the Component Integration Laboratories at

415-750-8352.

  The Components Integration Laboratory, based in San Francisco, is a
non-profit
association dedicated to software plug-and-play interoperability across
multiple
computer platforms and applications.

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Inc.

  /CONTACT: Cindy McCaffrey of APPLE COMPUTER, Inc., 408-974-1578, or
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Greer of Regis McKenna, Inc., 408-974-3886/

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