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5 COMMISSION  
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RICHARD W. WIEKING  
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NORTHERN DISTRICT OF CALIFORNIA

E-Filing

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 EQUAL EMPLOYMENT OPPORTUNITY )  
15 COMMISSION, )

16 Plaintiff,

17 v.

18 BORLAND SOFTWARE CORP., )

19 Defendant. )

Civil Action No.

05 3979  
COMPLAINT

HRL

Civil Rights - Employment Discrimination

DEMAND FOR JURY TRIAL

20 NATURE OF THE ACTION

21 This is an action under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of  
22 1964 and Title I of the Civil Rights Act of 1991 to restrain the payment of compensation to an  
23 employee of one sex in amounts less than the amounts paid to employees of the opposite sex, and  
24 to correct unlawful employment practices on the basis of sex (female), race (Asian), and national  
25 origin (Vietnamese) and to provide appropriate relief as a result of such unlawful practices.  
26 Plaintiff alleges that Borland Software Corporation paid Tuyen Tran less than its white male  
27 employees were paid for performing substantially equal work and otherwise discriminated  
28 against Ms. Tran because of her sex, race, and national origin.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,

1 1343 and 1345; *see also* Paragraph 3 below. This action is authorized and instituted pursuant to  
2 Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the FLSA), as amended, 29  
3 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as  
4 Section 6(d) of the FLSA, 29 U.S.C. § 206(d), and pursuant to Section 706(f)(1) and (3) of Title  
5 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (Title VII).  
6 This action is also authorized and instituted pursuant to Section 102 of Title I of the Civil Rights  
7 Act of 1991, 42 U.S.C. § 1981a.

8 2. Intradistrict Assignment: The employment practices alleged to be unlawful were  
9 committed in Santa Clara County within the jurisdiction of the United States District Court for  
10 the Northern District of California.

11 PARTIES

12 3. Plaintiff, the Equal Employment Opportunity Commission (“the Commission”), is  
13 the agency of the United States of America charged with the administration, interpretation, and  
14 enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action  
15 by Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of  
16 Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705;  
17 and by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

18 4. At all relevant times, Defendant, Borland Software Corporation (“Defendant  
19 Employer”), has continuously been a corporation, doing business in the State of California and  
20 the County of Santa Clara, and has continuously had at least 15 employees.

21 5. At all relevant times, Defendant Employer has continuously been an employer  
22 engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of  
23 Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

24 6. At all relevant times, Defendant Employer has acted directly or indirectly as an  
25 employer in relation to employees and has continuously been an employer within the meaning of  
26 Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

27 7. At all relevant times, Defendant Employer has continuously employed employees  
28 engaged in commerce or in the production of goods for commerce within the meaning of

1 Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (i) and (j).

2 STATEMENT OF TITLE VII CLAIMS

3 8. More than thirty days prior to the institution of this lawsuit, Tuyen Tran filed a  
4 charge with the Commission alleging violations of Title VII by Defendant Employer. All  
5 conditions precedent to the institution of this lawsuit have been fulfilled.

6 9. Since at least October 24, 2002, Defendant Employer has engaged in unlawful  
7 employment practices at its Cupertino, California, location, in violation of Section 703(a)(1) of  
8 Title VII, 42 U.S.C. § 2000e-2 (a)(1). Defendant Employer discriminated against Ms. Tran by  
9 subjecting her to more adverse compensation, terms, and conditions of employment because of  
10 her sex, race and national origin.

11 10. The effect of the practices complained of in paragraph 9 above has been to deprive  
12 Ms. Tran of equal employment opportunities and otherwise adversely affect her status as an  
13 employee, because of her sex, race and national origin.

14 11. The unlawful employment practices complained of in paragraph 9 above were  
15 intentional.

16 12. The unlawful employment practices complained of in paragraphs 9 above were  
17 done with malice or with reckless indifference to the federally protected rights of Ms. Tran.

18 STATEMENT OF EQUAL PAY ACT CLAIMS

19 13. Since at least October 24, 2002, Defendant Employer has violated Sections  
20 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying compensation  
21 to Ms. Tran in its Cupertino, California facility, at rates less than the rates paid to male  
22 employees in the same establishment for substantially equal work on jobs the performance of  
23 which requires equal skill, effort, and responsibility, and which are performed under similar  
24 working conditions.

25 14. As a result of the acts complained of above, Defendant Employer unlawfully has  
26 withheld and is continuing to withhold the payment of compensation due to Ms. Tran.

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PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in compensation discrimination and in any other employment practice which discriminates on the basis of sex, race and national origin.

B. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating within any of its establishments between employees on the basis of sex, race and national origin by paying compensation to employees of one sex, race and national origin at rates less than the rates at which it pays compensation to employees of the opposite sex, race and national origin for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for women, Asians and Vietnamese and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant to make whole Ms. Tran, by providing appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to lost compensation and frontpay.

E. Order Defendant to make whole Ms. Tran by providing compensation for past and future pecuniary losses resulting from the unlawful practices described in paragraphs 9 and 13 above, in amounts to be determined at trial.

F. Order Defendant to make whole Ms. Tran by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 9 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

G. Order Defendant to pay Ms. Tran punitive damages for its malicious and/or

1 reckless conduct described in paragraph 9 above, in an amount to be determined at trial.

2 H. Grant a judgment requiring Defendant to pay appropriate back compensation in  
3 amounts to be determined at trial, an equal sum as liquidated damages, and prejudgment interest  
4 to Ms. Tran whose wages are being unlawfully withheld as a result of the acts complained of  
5 above.

6 I. Grant such further relief as this Court deems necessary and proper in the public  
7 interest.

8 J. Award the Commission its costs of this action.

9 JURY TRIAL DEMAND


10 The Commission requests a jury trial on all questions of fact raised by its complaint.

11 James L. Lee  
12 Deputy General Counsel

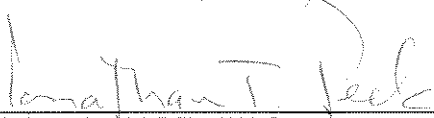
13 Gwendolyn Young Reams  
14 Associate General Counsel

15 **Equal Employment Opportunity**  
16 **Commission**  
17 1801 L Street, N.W.  
18 Washington, DC 20507

17 Date: Sept. 29, 2005

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18 \_\_\_\_\_  
19 WILLIAM R. TAMAYO  
20 Regional Attorney

20 Date: Sept 29, 2005

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22 JONATHAN T. PECK  
23 Supervisory Trial Attorney

22 Date: Sept 29, 2005

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