

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP. ANTITRUST)
LITIGATION) MDL Docket No. 1332
)
This document relates to:) Hon. J. Frederick Motz
)
Daisy Mountain Fire District)
v. Microsoft Corp.,)
Civil Action No. JFM-07-2851)
_____)

NOTICE OF CLASS ACTION SETTLEMENT HEARING

THIS NOTICE HAS BEEN AUTHORIZED BY A FEDERAL COURT.

**AS A GOVERNMENT ENTITY, YOU MAY BE A MEMBER OF THE
SETTLEMENT CLASS IN PENDING LITIGATION**

**YOU MAY BE ENTITLED TO A RECOVERY UNDER THE TERMS OF A
PROPOSED SETTLEMENT**

**TO: All government entities located in Arizona (excluding the federal government,
foreign governments and government entities from states other than Arizona):**

1. WHAT IS THE PURPOSE OF THIS NOTICE?

The Federal District Court in Maryland is determining whether it should certify a Settlement Class of government entities in the State of Arizona that purchased or licensed certain Microsoft software between May 18, 1994 and December 31, 2008 either: (1) from or through an authorized distributor, retailer, or other re-seller of Microsoft software and not directly from Microsoft; or (2) pre-installed on a computer. In either case, the government entity cannot have obtained the software for the purpose of resale. This Notice summarizes the terms of the proposed Settlement, the potential rights of Settlement Class members, and their right to object to the Settlement.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Daisy Mountain Fire District filed this lawsuit in the Arizona Superior Court on behalf of itself and all other Arizona governmental entities, alleging that they had been overcharged for purchases or licenses of Microsoft Windows or MS-DOS operating system software and/or "Word" or "Excel" application software (except those versions designed for use on Personal Digital Assistant devices (known as "PDAs") or servers. Plaintiff alleged that the overcharges violated the Arizona state antitrust statutes.

Microsoft removed the case to United States District Court for the District of Arizona based on the Class Action Fairness Act of 2005. The case was subsequently transferred to the District of Maryland, as part of the Multi-District Litigation (“MDL”) program in federal courts. Under certain circumstances, the MDL program designates one federal court to hear the pre-trial stages of cases pending against a single defendant. The Federal District of Maryland had been chosen to preside over antitrust cases against Microsoft before this case was filed.

Microsoft denied all allegations of wrongdoing and liability. It brought a motion to dismiss the case based on the statute of limitations. The court granted that motion, ruling that the plaintiff and class it sought to represent could recover only for claims arising within the four years before the filing of the complaint. In its ruling, the court permitted the plaintiff to file an amended Complaint. The plaintiff had not yet filed its amended complaint when the parties reached a Settlement of the action.

3. WHY DID I RECEIVE THIS NOTICE?

If you received this notice, it means that you are an Arizona government entity that may be a member of the Settlement Class described in this Notice. The State of Arizona, through the office of the Attorney General, and Class Counsel, using data from the 2007 United States Census, have determined which entities are eligible to be included in the Settlement Class. The list of those entities is attached to this Notice (the “Member List”).

4. DO I NEED TO DO ANYTHING TO REMAIN A MEMBER OF THE CLASS?

If you are a government entity included on the Member List, you will automatically remain a member of the Settlement Class, unless you take steps to exclude yourself, as described below.

If you choose to remain a member of the class, the plaintiff and its attorneys will act as your representative and counsel for the remainder of the Settlement process and you will not be responsible for any attorneys’ fees or costs. You are entitled to hire your own counsel, but if you do, he or she may hold you responsible for fees and costs.

If you change your address, or if this notice was not mailed to the correct address, you should immediately send your updated address, in writing, referencing the case name and number -- *In re Microsoft Corp. Antitrust Litigation, Daisy Mountain Fire Dist. v. Microsoft Corp.* (MDL Docket No. 1332, Civil Action No. JFM-07-2851) -- to plaintiff’s counsel, Mark A. Griffin, Keller Rohrback, L.L.P., 1201 Third Avenue, Suite 3200, Seattle, Washington 98101-3052. If there is another person or entity that should receive further communications about the proposed Settlement, please provide that information to plaintiff’s counsel at the address provided above.

5. WHO REPRESENTS THE SETTLEMENT CLASS?

If the proposed Settlement is approved, the Court will appoint:

(a) Daisy Mountain Fire District as the Class Representative for all members of the Settlement Class; and

(b) Keller Rohrback L.L.P. and Keller Rohrback P.L.C. as Class Counsel. These attorneys (“Class Counsel”) will represent the interests of all Arizona government entities that are members of the Settlement Class.

6. WHAT ARE THE TERMS OF THE SETTLEMENT?

Microsoft has agreed to pay \$4,415,258.00 (the “Settlement Benefits”) to be distributed among the members of the Settlement Class in exchange for a release by all class members of all claims, whether legal, equitable, injunctive, or regulatory, for damages, fines, penalties, restitution, disgorgement or any other relief from or against Microsoft arising under federal or Arizona state law relating to overcharges for Microsoft operating system or application software obtained by purchase or license between May 18, 1994 and December 31, 2008.

The members of the Settlement Class include all Arizona state or local government entities, including subdivisions, departments, agencies and other subsidiary organizations that operate under their authority, that are created by constitution, statute, code or administrative rule and that derive at least 60% of their funding from one or more government entity. The Settlement Class includes public schools. To be included in the Settlement Class, the government entity must have purchased or licensed Microsoft operating system or application software between May 18, 1994 and December 31, 2008 (from an entity other than Microsoft) for use and not for resale. The Settlement Agreement provides additional details on the requirements for a government entity to be included in the Settlement Class. That information can be found at www.daisymountainclassaction.com.

The Settlement Agreement provides that each Settlement Class member will receive Settlement Benefits that represents the proportion that its Full Time Equivalent Employees (“FTEs”) identified in the 2007 Census bears to the total number of FTEs of all participating Settlement Class members. For example, if a government entity employed 2.0% of the FTE’s employed by all government entities in Arizona in 2007 (with the adjustment described below), it would be entitled to 2.0% of the Settlement Benefits.

A list of the eligible government entities receiving this Notice, the FTEs attributed to each, and the amount of the Settlement Benefits each will receive if all listed entities participate in the proposed Settlement is set forth in the “Plan of Distribution” that can be found at www.daisymountainclassaction.com. That Plan sets forth the FTEs attributed to each Settlement Class Member and the amount of the Settlement Benefits that each one will receive. The Settlement Class members will receive these amounts directly, except for subdivisions of the State of Arizona, for which the Attorney General of the State of Arizona will receive the

combined portion of the Settlement Benefits for further distribution in the amounts set forth in the Plan of Distribution.

If you believe you or another government entity were included in or omitted from this list in error or that the FTE's attributed to you do not properly reflect data from the 2007 Census, with the adjustment described below, you should inform Class Counsel in writing at Keller Rohrbach L.L.P., 1201 Third Avenue, Suite 3200, Seattle, Washington 98101-3052, Attention: Mark A. Griffin, **no later than October 2, 2009**. You should provide your address and telephone number and the name of an individual with authority to speak for the government entity.

7. WHY WAS THE FTE ALLOCATION METHOD CHOSEN AS THE DISTRIBUTION MECHANISM FOR SETTLEMENT BENEFITS?

Plaintiff believes that the FTE allocation distribution is a fair, efficient, and expeditious way to distribute the Settlement Benefits and will ask the Court to approve it on that basis. The following paragraphs describe the method in greater detail and explain why it is fair and efficient.

Using a government entity's proportion of the total Arizona government FTEs reflected in the 2007 Census data is an economically valid method for approximating the proportionate share of computer software purchases made by that entity over time. Although it cannot be exact, it does not require government entities to expend time and money to assess the exact number of purchases made during the time period and to require them to make claims based on actual purchases, supported by written documentation.

The alternative of using an outside data-gathering and analysis firm to determine actual purchases of the specific products (which might reduce the burden on government entity employees) would increase the cost of administration and therefore, decrease the amounts to be distributed to Class members. In addition, some entities might not be able to collect and submit purchase records for the time period in question to an outside firm. As a result, this method could still result in unfairness and inefficiency.

Thus, the FTE allocation distribution method is more efficient than the possible alternative methods described above. The plaintiff has also worked to make the FTE allocation method as fair as possible. First, it uses 2007 United States' Census data to determine FTEs for all state and local governmental entities in Arizona. The 2007 Census reports a combined FTE total for the State of Arizona, which includes all separate subdivisions, departments and agencies that operate as part of the State. The Arizona Attorney General's office has estimated the number of FTE's in each separate subdivision, department and agency. Combined together, those FTE estimates make up the total FTEs reported in the 2007 Census under the "State of Arizona." The number of FTEs attributed to each entity that operates at the state level is set forth in the Plan of Distribution set forth at www.daisymountainclassaction.com.

The distribution method required one adjustment. The 2007 Census reported 17,342.5 FTEs that were not included in the Attorney General's calculations because the Census reports Community College FTEs as employees of the State of Arizona rather than as employees of separate entities organized and operating under the authority of a county or counties. Because Arizona Community Colleges fit the definition of a government entity established by the Settlement Agreement, they are eligible to receive a portion of the Settlement Fund directly, rather than as a part of the State of Arizona, and they are listed separately in the Plan of Distribution rather than as part of the State government. The 2007 Census data consolidated FTE's employed by community colleges rather than listing them separately. To deal with this issue and insure that the various community colleges would be treated fairly and equitably with other government entities, the 17,342.5 combined community college FTE's were distributed among the districts in the same proportion as each district's 2007 enrollment bore to total 2007 community college enrollment. The enrollment figures were obtained from a report to the Arizona Legislature by the State of Arizona Office of the Auditor General for the year ended June 30, 2007.

If any of the entities listed in the "Plan of Distribution" elects to exclude itself from the Settlement, the Settlement Benefits will be distributed by recalculating the total number of FTEs to include only those government entities still participating, recalculating the percentage of the total FTEs that each of the participating entities holds, and giving each of the participating entities its resulting proportionate share of the Settlement Benefits.

If you want to participate in the Settlement and be included in the Settlement Class but you do not agree that the Plan of Distribution adequately compensates your government entity, you have the following options:

(a) If you think that the FTE's attributed to you are incorrect, you should contact Class Counsel in writing, setting forth the basis for your belief, and asking them to recalculate for your government entity;

(b) If after discussions with Class Counsel, you still believe that the FTE's attributed to you are incorrect, you can appear at the Court when the Settlement Agreement is presented for approval, provided you inform Class Counsel and counsel for Microsoft **no later than November 2 , 2009**;

(c) If you believe the Plan of Distribution is unfair, you can appear at the Court when the Settlement Agreement is presented for approval, provided you inform Class Counsel and Counsel for Microsoft **no later than November 2, 2009**.

If you remain a member of the Settlement Class, and the Court approves the Settlement Agreement, you do not have to do anything else to receive your allocated portion of the Settlement Benefits, based on the FTEs attributed to you in the Plan of Distribution set forth at www.daisymountainclassaction.com.

8. WHAT ARE THE RESPONSIBILITIES OF GOVERNMENT ENTITIES UNDER THE SETTLEMENT AGREEMENT?

The members of the Settlement Class must use the Settlement payment to purchase "Qualifying Hardware" or "Qualifying Software," which are defined in the proposed Settlement. "Qualifying Hardware" includes any computer hardware (desktop, laptop, or tablet computers, printers, scanners, monitors, keyboards or pointing devices like a mouse or trackball) except for peripheral accessories like cables, speakers, internal or external storage units (including internal or external CD-Rom, DVD or other read/write devices, zip drives, tape backup or storage units, memory, video or audio cards, motherboards or CPUs) that are not included as part of the purchase of a computer. Qualifying Hardware **excludes** servers, PDAs and other hand-held devices. "Qualifying Software" includes any non-custom software title, including any software title not published by Microsoft, that (a) is designed for use with any Qualifying Hardware, and (b) is not designed to operate exclusively on a server or PDA. Microsoft will have the right to audit the use of Settlement Benefits to insure that they have been used by government entities to purchase Qualifying Hardware or Qualifying Software.

In accepting a portion of the Settlement Benefits, each government entity is agreeing to the terms of the Settlement Agreement, including the Release in Section III, which is a material term of the Agreement. The Release provides:

Upon Final Approval, each Settlement Class member, on behalf of itself and its departments, subdivisions, agencies and other subsidiary organizations that are part of the Settlement Class member or operate under its authority, hereby expressly and irrevocably waives and fully, finally and forever settles and releases any and all claims, whether legal, equitable, injunctive, or regulatory, for damages, fines, penalties, restitution, disgorgement or any other relief from or against Microsoft, and/or its directors, officers, employees, attorneys, insurers or agents, whether such claims are known or unknown, asserted or unasserted, that any member of the Settlement Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission that is the subject matter of the Complaint filed in the Lawsuit and which arise from or relate to the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application and where the claims, demands, actions, suits or causes of action concern or relate to any of the following: (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and A.R.S. §§ 44-1401 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, and/or (g) other federal or state law, regulation or common law similar or analogous to any of the above. This Release does not include claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of Arizona. This Release does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 31, 2008. However, this Release does include any and all claims referenced above relating to Microsoft's conduct, acts or omissions that occurred on or prior to December 31, 2008, and should be construed broadly to the maximum extent permitted by law.

