

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
<i>Daisy Mountain Fire District</i>)	
<i>v. Microsoft Corp.</i> ,)	
Civil Action No. JFM-07-2851)	
_____)	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Court approval, as of May 18, 2009, on behalf of the Settlement Class (as defined below), and Microsoft Corporation (“Microsoft”), in *Daisy Mountain Fire District. v. Microsoft Corp.*, Civil Action No. JFM-07-2851, which is coordinated as part of *In Re Microsoft Corp. Antitrust Litigation*, MDL Docket No. 1332, pending before the Honorable J. Frederick Motz in the United States District Court for the District of Maryland (the “Lawsuit”).

WHEREAS, the Daisy Mountain Fire District is a named plaintiff in the Lawsuit (the “Plaintiff”);

WHEREAS, Keller Rohrback L.L.P. and Keller Rohrback P.L.C. (“Keller Rohrback”) are two of the law firms representing Plaintiff in the Lawsuit;

WHEREAS, Plaintiff has made certain claims against Microsoft based upon alleged violations of the antitrust laws of the state of Arizona, A.R.S. §§ 44-1401 *et seq.*;

WHEREAS, Plaintiff contends that it is a member of a certain putative class that has suffered damages and other injuries as a result of Microsoft’s alleged unlawful conduct;

WHEREAS, Microsoft denies each and every one of Plaintiff's allegations of unlawful conduct, damages and other injuries;

WHEREAS, after arm's-length negotiations between counsel for Plaintiff and counsel for Microsoft, this Settlement Agreement has been reached;

WHEREAS, the Class Representative (as defined below) and Keller Rohrback have concluded, after investigation of the facts, and after careful consideration of the circumstances, that it would be in the best interests of the Settlement Class to enter into this Settlement Agreement; and both the Class Representative and Keller Rohrback consider the Settlement set forth below to be fair, reasonable, adequate and in the best interests of the Settlement Class;

WHEREAS, Plaintiff will promptly file a motion requesting preliminary approval of this Settlement Agreement, conditional certification of the Settlement Class, approval of Keller Rohrback as Counsel for the Settlement Class and appointment of Plaintiff as Class Representative with full authority to enter into this Settlement Agreement on behalf of all members of the Settlement Class; and

WHEREAS, Microsoft has concluded that it will enter into this Settlement Agreement in order to, among other things, avoid the further expense, inconvenience, burden, uncertainty and risk of this litigation;

NOW, THEREFORE, it is agreed that, upon final approval of this Settlement Agreement by the Court, All Claims (as defined below) of the Settlement Class against Microsoft be settled and compromised, and that this case be dismissed with prejudice, without costs to any party (except as provided below), on the following terms and conditions:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth below.

A. "All Claims" means any and all claims, whether legal, equitable, injunctive, or regulatory, for damages, fines, penalties, restitution or disgorgement or any other relief from or against Microsoft or its directors, officers, employees, attorneys, insurers or agents, whether 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 Microsoft Operating System and/or Microsoft Application software 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. "All Claims" does not include claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of Arizona. "All Claims" does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 31, 2008. However, "All Claims" 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.

B. "Class Representative" means Daisy Mountain Fire District.

C. "Counsel for the Settlement Class" means Keller Rohrback.

D. "Court" means the United States District Court for the District of Maryland.

E. "Date of Final Approval" means the first date upon which all of the events listed in section II below have occurred.

F. "Description of Settlement Benefits" means a written notice that fully informs each government entity on the Eligible Class Member List of the amount of its allocated share of the Settlement Benefits to be distributed directly to that particular Eligible Member of the Settlement Class or, in the case of the State of Arizona, to the Attorney General for further distribution to Subdivisions of the State.

G. "Effective Date of the Settlement" means 30 days after the Date of Final Approval.

H. "Eligible Class Member List" means a list of government entities compiled by Counsel for the Settlement Class, organized by level of government, which it believes to be Eligible Members of the Settlement Class, as defined in section I.(E) below. The current list is attached as Exhibit 1 to Appendix A of this Agreement. The Eligible Class Member List shall be modified to reflect any corrections that Counsel for the Settlement Class believes necessary prior to the Objection Date or that are required by order of the Court. Neither Microsoft nor its counsel shall have any responsibility for determining which government entities are Eligible Members of the Settlement Class, determining which government entities should be included on the Eligible Class Member List, determining the amount that each Eligible Class Member is entitled to receive or determining whether any modifications should be made to the Eligible Class Member List.

I. "Eligible Members of the Settlement Class" means the government entities that are included in the Settlement Class and are entitled to receive Settlement Benefits under the terms of this Settlement Agreement. The Eligible Members of the Settlement Class include all Arizona local and state governmental entities or any entity that is created by the Arizona constitution, statutes, codes or administrative rules and that derives at least 60% of its funding from one or more of the aforementioned state or local governmental entities, including without limitation public school districts.

Except for Subdivisions of the State, Eligible Members of the Settlement Class must have the following characteristics:

1. They are established by law as entities that have a legal existence which is separate and distinct from any other government entity;
2. They are not legally bound by a release of claims executed by or on behalf of any other government entity;
3. They have the independent legal capacity to levy taxes, incur debt and/or take title to real or personal property in their own names;
4. They indirectly purchased and/or licensed Microsoft Operating System software and/or Microsoft Application software at any time between May 18, 1994 and December 31, 2008 and did not obtain such software for purposes of resale ;and
5. They remain in existence on the Effective Date of the Settlement.

Subdivisions of the State, as defined in section I.(W) below, qualify as Eligible Members of the Settlement Class if they indirectly purchased and/or licensed Microsoft Operating System software and/or Microsoft Application software at any time between May 18,

1994 and December 31, 2008, did not obtain such software for purposes of resale and remain in existence on the Effective Date of the Settlement.

J. "Final Approval" means the occurrence of all of the following events:

1. This Settlement is approved in all respects by the Court;
2. The Court enters an Order of Approval and Final Judgment as provided in section II.(I) below;
3. The Court dismisses this case with prejudice as provided in sections II.(I) and II.(K) below; and
4. The time to appeal or seek permission to appeal from the Court's Order of Approval and/or Final Judgment has expired, or, if appealed, the Order of Approval and Final Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

K. "Microsoft" means Microsoft Corporation, its successors, assigns and subsidiaries.

L. "Microsoft Application" means versions of "Word" word processing applications and Excel spreadsheet applications (other than Word or Excel applications exclusively for servers or personal digital assistants ("PDAs")) that were licensed either on a standalone basis or included in productivity suite applications for use with either MS-DOS or Windows, and that were available for purchase at any time on or before December 31, 2008.

M. "Microsoft Operating System" means versions of MS-DOS and Windows operating system software (other than operating system software exclusively for servers or PDAs) that were available for purchase at any time on or before December 31, 2008.

N. "Notice Commencement Date" means 30 days after the Court enters an order preliminarily approving this Settlement Agreement.

O. "Notice Ending Date" means 60 days after the Notice Commencement Date.

P. "Notice Period" means the period of time from the Notice Commencement Date through the Notice Ending Date.

Q. "Objection Date" means the date that is 45 days after the Notice Ending Date and shall be the deadline by which members of the Settlement Class must file with the Court and serve on Counsel for the Settlement Class and counsel for Microsoft any written objections to any of the terms of this Settlement and any written objections to the request for attorneys' fees included in the class notice, along with any supporting documentation, in order for those objections to be considered by the Court. Objections may be filed by any entity whose claims against Microsoft will be released under the terms of Section III of this Settlement Agreement.

R. "Opt-Out Date" means the date that is 45 days after the Notice Ending Date and shall be the postmark deadline by which members of the Settlement Class must mail their request to be excluded from the Settlement Class in order for that request to be effective.

S. "Qualifying Hardware" means any new desktop, laptop or tablet computer for any operating system platform and/or the following devices or components: printers, scanners, monitors, keyboards and pointing devices, e.g., mouse, trackball, etc. Qualifying Hardware excludes all other devices and components (including, but not limited to, cables, speakers or other external devices, internal or external storage units, 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 also excludes servers, PDAs and other hand-held devices.

T. "Qualifying Software" means any non-custom software title, including any software title not published by Microsoft, that (a) is designed for use with any Qualifying Hardware described in section I(S) above, and (b) is not software designed to operate exclusively on servers, PDA or other hand-held devices.

U. "Settlement Class" means all government entities located in Arizona (excluding the federal government, foreign governments and government entities from states other than Arizona) that indirectly licensed Microsoft Operating System software and/or Microsoft Application software between May 18, 1994 and December 31, 2008 and did not obtain such software for purposes of resale.

V. "Settlement Benefits" means the benefits made available to the Eligible Members of the Settlement Class pursuant to the terms of this Settlement Agreement.

W. "Subdivisions of the State" means Eligible Members of the Settlement Class listed on Exhibit I to Appendix A that operate as departments, bureaus, divisions, agencies, and other subsidiary organizations under the authority or on behalf of the State of Arizona.

II. COURT APPROVAL, CLASS NOTICE, OPT-OUT PROCEDURES, AND OBJECTION PROCEDURES

A. Best Efforts. Keller Rohrback, the Class Representative, Microsoft and counsel for Microsoft agree that they will: (1) recommend approval of this Settlement Agreement to the Court; (2) use their best efforts to obtain approval of this Settlement Agreement and to carry out its terms; and (3) support the Settlement contemplated by this Settlement Agreement in all public statements, including all statements in Court and all statements to the news media.

B. Certification of Settlement Class.

1. Plaintiff shall submit to the Court within thirty days of the date of this Settlement Agreement a motion for conditional certification of the Settlement Class and

preliminary approval of this Settlement Agreement on behalf of the Settlement Class, together with a proposed preliminary approval order substantially in the form attached as Appendix B. The motion for conditional certification of the Settlement Class and preliminary approval shall seek appointment of Plaintiff as representative of the Settlement Class, appointment of Keller Rohrback as Counsel for the Settlement Class, and approval of the form and manner of the notice, opt-out and objection procedures as set forth in sections II(E), II(F), and II(H) below. Microsoft will not oppose Preliminary Approval and Conditional Certification of the Settlement Class that is consistent with the terms of this Settlement Agreement.

2. Microsoft does not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of this action. The proposed preliminary approval order (attached as Appendix B) that Plaintiff will submit to the Court with its motion for preliminary approval and conditional certification of the Settlement Class shall specify that if this settlement is terminated, or does not obtain Final Approval, the conditional certification of the Settlement Class shall be automatically vacated upon notice to the Court of the termination of the settlement, and the matter shall proceed as though the Settlement Class had never been conditionally certified and such findings had never been made, without prejudice to the ability of any party thereafter to request or oppose class certification on any basis.

C. Hearing Date. The motion for conditional certification of the Settlement Class and preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement.

D. Stay of Discovery and Other Proceedings. Upon moving for preliminary approval, the parties will seek a stay of the Lawsuit, including discovery, except for any action

required to implement or enforce this Settlement Agreement. Plaintiff and Microsoft shall file pleadings and otherwise take any steps necessary to implement this stay.

E. Notice.

1. The Eligible Class Member List. The Eligible Class Member List shall be posted and made electronically searchable on a publicly accessible website maintained by Counsel for the Settlement Class beginning no later than the Notice Commencement Date and ending no earlier than the Effective Date of the Settlement.

2. Form of Notice. In the motion for preliminary approval of this Settlement Agreement, Counsel for the Settlement Class shall apply to the Court for an order authorizing notice of the Settlement substantially in the form attached as Appendix A, which has been approved by Plaintiff and Microsoft. Such notice shall inform the Settlement Class of the terms of the Settlement Agreement, state the date scheduled by the Court for the hearing on final approval of the Settlement and advise class members of their rights to opt out of the Settlement, object to the Settlement or any of its provisions, object to the request for attorneys' fees and costs submitted by counsel for the Settlement Class and appear at the hearing on final approval. The notice disseminated pursuant to sections II(E)(5)(b) and II(E)(5)(c) below shall also inform class members that failure to opt out of this Settlement in a timely manner and/or the acceptance of the benefits distributed under the terms of this Settlement will constitute the class member's certification that all legal requirements necessary for the class member to participate in the Lawsuit and agree to a release of All Claims described in Section III below have been fully satisfied. The notice will summarize the method of distribution of Settlement Benefits and will inform its recipients that all of the Settlement Benefits will be distributed to Eligible Members of the Settlement Class. The notice will also explain to Subdivisions of the State that their share of

