

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 1550(b)]

J.C.C.P. No.: 4106

SETTLEMENT AGREEMENT

MICROSOFT CASES

This Settlement Agreement is made and entered into, subject to Court approval, as of June 16, 2003, on behalf of the California Class (as defined below), and Microsoft Corporation ("Microsoft"), in *Microsoft Cases*, J.C.C.P. No. 4106, pending before Judge Paul H. Alvarado in the Superior Court of California, County of San Francisco.

WHEREAS, plaintiffs have made certain claims against Microsoft based upon alleged violations of California state law as well as violations of federal antitrust law that serve as predicates to state law claims of unfair competition;

WHEREAS, such plaintiffs contend that they and the members of certain certified classes have suffered damages and other injuries as a result;

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

WHEREAS, after arm's-length negotiations between Lead Counsel for the California Class (as defined below) and Microsoft, this Settlement Agreement has been reached;

WHEREAS, the class representatives and Lead Counsel for the California Class have concluded, after investigation of the facts, and after carefully considering the circumstances, that it would be in the best interests of the California Class to enter into this Settlement Agreement; and both the class representatives and Lead Counsel for the California Class consider the Settlement set forth below to be fair, reasonable, adequate and in the best interests of the California Class;

WHEREAS, Townsend and Townsend and Crew LLP is Lead Counsel for the California Class, and by signing this Settlement Agreement, represents and warrants that it is fully authorized by the Executive Committee, pursuant to Pretrial Order No. 1: Case Management, to enter into this Settlement Agreement on behalf of the California 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 by the undersigned on behalf of the California Class and Microsoft, that All Claims (as defined below) of the California Class against Microsoft be settled and compromised, and that All Cases (as defined below) against Microsoft 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 Cases" means the cases listed on Appendix A to this Settlement Agreement, and includes *Microsoft Cases*, J.C.C.P. No. 4106, Superior Court of California, County of San Francisco, and all of the cases presently coordinated in that action.

B. "All Claims" means all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the California 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 which was or could have been alleged in any of the cases listed on Appendix A 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 (as defined below) 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 the Cartwright Act, California Business and Professions Code §§ 16720 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, (g) California's Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.*, (h) California's Unfair Practices Act, California Business and Professions Code §§ 17000 *et seq.* and/or (i) other federal or state law, regulation or common law similar or analogous to any of the above. "All Claims" does not include (a) claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of California, (b) claims arising from purchases directly from Microsoft Corporation of licenses for Microsoft Operating System or Microsoft Application software or (c) claims by competitors of Microsoft in their capacity as competitors. "All Claims" does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 15, 2001. However, "All Claims" includes any and all claims described above relating to Microsoft's conduct, acts or omissions that occurred on or prior to December 15, 2001.

C. "California End Users" means persons or entities who licensed Microsoft Applications and/or Microsoft Operating Systems software for use in California and not for resale. "California End Users" include companies headquartered outside California who are identified in the MS Sales database as using Microsoft Applications and/or Microsoft Operating

Systems in California.

D. "California Class" means all persons or entities who, between February 18, 1995, and December 15, 2001, indirectly acquired a license for Microsoft Operating System and/or Microsoft Applications software for use in California and who did not acquire it for the purpose of resale. Excluded from the California Class are:

(1) government entities, Microsoft officers and directors, subsidiaries in which Microsoft has greater than a 50 percent ownership interest and any judges or justices assigned to hear any aspect of this litigation; and

(2) all persons or entities who have properly excluded themselves from the plaintiff classes previously certified by the Court.

E. "Category I products" means all titles of software listed on Appendix B-1.

F. "Category II products" means all titles of software listed on Appendix B-2.

G. "Category III products" means all titles of software listed on Appendix B-3.

H. "Category IV products" means all titles of software listed on Appendix B-4.

I. "Claim Period" means the period beginning with the Notice Commencement Date (defined in Section II.E.7 below) and ending four months after the Notice Ending Date (defined in Section II.E.7 below), provided, however, that the Claim Period shall end no sooner than 30 days after the date on which the Court enters an Order of Approval and Final Judgment as provided in section II.G below. The Claim Period may be extended by agreement of the parties or subsequent order of the Court for good cause shown.

J. "Consumer Vouchers" means the vouchers issued to members of the California Class pursuant to the terms of this Settlement Agreement.

K. "Lead Counsel for the California Class" means Townsend and Townsend and Crew LLP.

L. "Court" means the Superior Court of California, County of San Francisco.

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

N. "Effective Date of the Settlement" means 60 days after the Date of Final Approval.

O. "Eligible Schools" means all public elementary, middle, junior high and high schools (K-12) in California at which at least 40 percent of the attending students are eligible to receive free or reduced price meals through the National School Lunch Program (*see* National School Lunch Act, 42 U.S.C. §§ 1751-1769). Eligible Schools shall also include all public high schools in California that serve students from public elementary, middle and junior high schools in California at which at least 40 percent of the attending students are eligible to receive free or reduced price meals through the National School Lunch Program.

P. "Face Value Amount" means the maximum amount of money available to pay for claims made by members of the California Class in accordance with this Settlement Agreement as further defined in section IV.B below.

Q. "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.G below;
3. The Court dismisses All Cases with prejudice as provided in sections II.G and II.J below;
4. Pursuant to Rule 1545 of the California Rules of Court, the clerk of the court in which each case listed on Appendix A was pending when that case was ordered coordinated in *Microsoft Cases*, J.C.C.P. No. 4106, enters the Final Judgment and serves notice of entry of the Final Judgment upon all parties to that case; and
5. 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.

R. The “First Cy Pres Amount” is sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the difference between the Face Value Amount and the amount of issued Consumer Vouchers.

S. The “First Cy Pres Period” shall begin on a date no later than the Effective Date of the Settlement (the “First Cy Pres Distribution Date”) and shall end on a date six years after the First Cy Pres Distribution Date.

T. “IT Support Services” are services that primarily involve the maintenance of hardware procured through this Settlement and the installation and maintenance of software procured through this Settlement.

U. “Microsoft” means Microsoft Corporation, its successors, assigns and subsidiaries.

V. “Microsoft Application” means the versions of the products listed on Appendices B-2, B-3 and B-4.

W. “Microsoft Operating System” means the versions of the products listed on Appendix B-1.

X. “Microsoft’s End User Data” shall include the following: the Microsoft eOpen database, the Microsoft Volume Licensing Services (“MVLS”) database, the Worldwide Marketing Database (“WWMDB”), the Microsoft Open License Program (“MOLP”) database, the Microsoft License (“MSL”) database, and any reasonably accessible data in the MS Sales database that is useful to making or verifying a claim and that is not included in the databases and systems listed above.

Y. “Objection Date” means the date by which members of the California Class must file with the Court and serve on Lead Counsel for the California Class and counsel for Microsoft

any written objections to the Settlement and any written objections to the request for attorneys' fees included in the class notice, along with any supporting documentation.

Z. "Professional Development Services" are: (1) Professional development services directed solely at leadership development for school administrators; (2) Professional development services directed solely at general curriculum development and instructional strategies; (3) Professional development services directed solely at the improvement of technology integration for any software title acquired through this Settlement; and (4) Training in the use of any hardware or software title acquired through this Settlement.

AA. The "Second Cy Pres Amount" is sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the difference between the amount of issued Consumer Vouchers and the amount of redeemed Consumer Vouchers at the end of the Settlement Period.

BB. The "Second Cy Pres Period" shall begin on a date no later than 60 days after the end of the Settlement Period (the "Second Cy Pres Distribution Date") and shall end on a date two years after the Second Cy Pres Distribution Date.

CC. The "Settlement Claims Administrator" means a competent firm selected by the Court after a review of the qualifications of the candidates offered by the parties, designated to manage specified portions of the notice program, process claims, issue Consumer Vouchers and redeem Consumer Vouchers from class members under sections II, IV and V below as well as issue and redeem cy pres General Purpose Vouchers and Software Vouchers under Section VI below. The Settlement Claims Administrator shall be jointly supervised by Microsoft and counsel designated by Lead Counsel for the California Class and copies of all information or correspondence sent to the Settlement Claims Administrator by Microsoft or counsel for the California Class shall also be sent simultaneously to the other party. Microsoft will pay all reasonable costs and expenses of the Settlement Claims Administrator relating to this Settlement Agreement.

DD. The "Settlement Period" means four years from the Effective Date of the Settlement.

II. COURT APPROVAL, CLASS NOTICE AND OBJECTION PROCEDURES

A. Best Efforts. Lead Counsel for the California Class, pursuant to their authority under Pretrial Order No. 1: Case Management, and 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. Motion for Preliminary Approval. Lead Counsel for the California Class shall submit to the Court on or before June 3, 2003 a motion for preliminary approval of this Settlement Agreement on behalf of the California Class, together with a proposed preliminary approval order substantially in the form attached as Appendix C. The motion for preliminary approval shall seek approval of the form and manner of notice and objection procedures as set forth in sections II.E and II.F below. The motion for preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement.

C. Stay of Discovery and Other Proceedings. Upon moving for preliminary approval, the parties will seek from this Court a stay of this litigation except for discovery permitted by this Court's Order Modifying The Discovery Cutoff, dated February 11, 2003, and any action required pursuant to the Court's continuing jurisdiction to enforce that discovery or this Settlement Agreement. Lead Counsel for the California Class and Microsoft shall file pleadings and otherwise take any steps necessary to effect this stay in this Court and in any other court in which such steps are necessary.

D. Opportunity to Adopt Different Settlement Terms. Prior to the Court's entry of an order preliminarily approving this Settlement Agreement, Microsoft will provide Lead Counsel for the California Class with the option to adopt all non-monetary terms (except language

relating to the release of claims) offered to other antitrust/unfair trade practices class action plaintiffs in other jurisdictions where term sheets or settlement agreements have been executed, in lieu of the comparable terms in this Settlement Agreement. This provision does not authorize Lead Counsel for the California Class to alter or replace the release of claims provisions contained in sections III.A and III.B of this Settlement Agreement. If the parties disagree as to whether a term in this Settlement Agreement is comparable to a term offered to other plaintiffs, the parties shall submit their disagreement to a mediator and/or to the Court for resolution.

E. Notice.

1. In the motion for preliminary approval of this Settlement Agreement (as set forth in section II.B above), Lead Counsel for the California Class shall apply to the Court for an order authorizing summary notice by publication to the California Class, substantially in a form to be approved by Microsoft or, in the event of a disagreement between Lead Counsel for the California Class and Microsoft, in a form to be approved by the Court. Such notice shall inform the California 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 right to object to the Settlement or to the request for attorneys' fees and costs submitted by Lead Counsel for the California Class or by any other counsel for plaintiffs in any of the cases listed in Appendix A, and to appear at the hearing on final approval. The notice will also contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers.

2. Subject to approval of the Court, Lead Counsel for the California Class and Microsoft agree that notice shall be published in print publications and/or disseminated via electronic media (such as America Online, Hotmail, and/or other Internet Access Providers that can direct notice specifically to California customers). Microsoft will bear the cost of publishing notice in print publications and the cost of disseminating notice via electronic media, up to a total of two hundred seventy thousand dollars (\$270,000.00) for the combined cost of publishing

notice in print publications and disseminating notice via electronic media. Lead Counsel for the California Class will determine the reasonable allocation of these funds between print publications and electronic media.

3. In the motion for preliminary approval of this Settlement Agreement (as set forth in section II.B above), Lead Counsel for the California Class shall apply to the Court for an order authorizing mailed written notice (which notice shall include a hard copy of a Claim Form) substantially in a form to be approved by Microsoft or, in the event of a disagreement between Lead Counsel for the California Class and Microsoft, in a form to be approved by the Court. Lead Counsel for the California Class and Microsoft will provide the Settlement Claims Administrator with the information in their possession that is necessary to facilitate such written notice to be mailed, via the U.S. Postal Service, (a) to those California End Users whose mailing addresses are in any of the following databases: MS Sales, MSL, MOLP, WWMDB, and Microsoft product support databases (including the Clarify, PSS Reporting Warehouse and PID Server databases); (b) to those California End Users who are subscribers to MSN-Internet Services and whose mailing addresses indicate that they live in California; (c) to those Information Technology managers whose mailing address indicates that they are located in California or work for companies with operations in California, and are included in any database compilation of IT managers maintained by Microsoft, including but not limited to TechNet; (d) to those California End Users whose mailing addresses are known by Lead Counsel for the California Class and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement; and (e) to those California End Users whose mailing addresses can be obtained in discovery by Lead Counsel for the California Class from third parties and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement. Information obtained through such third party discovery shall not be provided to any person or entity other than the Settlement Claims Administrator chosen to administer this Settlement and any other persons or entities authorized to receive such

information under the Protective Order dated April 20, 2000, subject to such modifications, if any, that the Court may make to the Protective Order as the result of any future motions or proceedings. Such information shall not be used for any purpose other than notice to the class, administration of the claims process under this Settlement Agreement and such other purposes as may be authorized by order of the Court. The mailed notice to each California End User whose mailing address is recorded in WWMDB and who is not a volume licensee will include a printout (to be provided by Microsoft to the Settlement Claims Administrator) sufficient to identify the number of licenses in each applicable product category found in WWMDB for that California End User. All mailed notices will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers. Microsoft will bear the cost of such notice.

4. In the motion for preliminary approval of this Settlement Agreement (as set forth in section II.B above), Lead Counsel for the California Class shall apply to the Court for an order authorizing emailed notice (which notice shall include a link to an electronic copy of a Claim Form) substantially in a form to be approved by Microsoft or, in the event of a disagreement between Lead Counsel for the California Class and Microsoft, in a form to be approved by the Court. Lead Counsel for the California Class and Microsoft will provide the Settlement Claims Administrator with the information in their possession that is necessary to facilitate the issuance of such notice to be emailed, (a) to those California End Users whose email addresses are in any of the following databases: MS Sales, MSL, MOLP, WWMDB, and Microsoft product support databases (including the Clarify, PSS Reporting Warehouse and PID Server databases); (b) to those California End Users who are subscribers to MSN-Internet Services and whose mailing addresses indicate that they live in California; (c) to those Information Technology managers whose mailing address indicates that they are located in California or work for companies with operations in California, and whose email addresses are included in any database compilation of IT managers maintained by Microsoft, including but not

limited to TechNet; (d) to those California End Users whose email addresses are known by Lead Counsel for the California Class and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement; and (e) to those California End Users whose email addresses can be obtained in discovery by Lead Counsel for the California Class from third parties and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement. Information obtained through such third party discovery shall not be provided to any person or entity other than the Settlement Claims Administrator chosen to administer this Settlement and any other persons or entities authorized to receive such information under the Protective Order dated April 20, 2000, subject to such modifications, if any, that the Court may make to the Protective Order as the result of any future motions or proceedings. Such information shall not be used for any purpose other than notice to the class, administration of the claims process under this Settlement Agreement and such other purposes as may be authorized by order of the Court. All emailed notices will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers. Microsoft will bear the cost of such notice.

5. Lead Counsel for the California Class will also cause the Court-approved notice of the Settlement to be posted, during the entire Notice Period (as defined in section II.E.7 below), on an Internet Web site. The Web site will be maintained and managed by the Settlement Claims Administrator. An electronic copy of a Claim Form will be available on the Web site, as well as additional instructions relating to the filing and processing of claims. All notices pursuant to sections II.E.1, II.E.2, II.E.3, and II.E.4 above shall direct California End Users to the Web site. All notices pursuant to sections II.E.1, II.E.2, II.E.3, and II.E.4 above shall also direct California End Users to a toll-free "800" telephone number from which Claim Forms and additional information can be obtained. Microsoft will pay all costs and expenses incurred in connection with the maintenance of the Web site and the toll-free telephone number.

6. In addition to the Web site described in section II.E.5 above, a copy of the notice will be posted on Microsoft's corporate Web site and will be linked to the "legal issues" tab or some other more descriptive tab name to be agreed upon by Lead Counsel for the California Class and Microsoft.

7. The written notice sent by mail and by email pursuant to sections II.E.3 and II.E.4 above shall be provided during a period ("Notice Period"), which shall begin on a date within 60 days after the Court enters an order preliminarily approving this Settlement Agreement ("Notice Commencement Date"), and which shall end on a date 60 days after the Notice Commencement Date ("Notice Ending Date"). The Settlement Claims Administrator, Lead Counsel for the California Class and Microsoft shall use all reasonable efforts to ensure that the notice by publication described in sections II.E.1 and II.E.2 above and the mailed and emailed notice described in sections II.E.3 and II.E.4 above are completed during the Notice Period. If it is not possible to complete the required notice before the end of the Notice Period it shall be completed as soon as possible thereafter, and the parties will seek an Order of the Court relating to the completion of the Notice. Public statements about the Settlement during the Claim Period shall not contradict the content of the notices described in this section II.E.

8. The Settlement Claims Administrator shall utilize the national change of address service through the United States Postal Service to obtain corrected mailing addresses for California End Users whose notices are returned because they were sent to incorrect addresses. Microsoft will pay up to an additional thirty thousand dollars (\$30,000.00) to allow the Settlement Claims Administrator to utilize other reasonable means to obtain corrected addresses.

9. Microsoft will bear the costs of notice as provided in this section II.E, subject to the limitation on the cost of published notice set forth in section II.E.2 above and the limitation on the cost of obtaining corrected addresses set forth in section II.E.8 above, whether or not this Settlement Agreement obtains Final Approval or is otherwise terminated.

F. Procedures for Objecting to the Settlement. Lead Counsel for the California Class and Microsoft will recommend that the Court approve an Objection Date that is 45 days after the Notice Ending Date. Any member of the California Class may appear at the hearing on final approval of the Settlement to present any objections to the Settlement, or to present any opposition to the request for attorneys' fees and costs submitted by Lead Counsel for the California Class or by any other counsel for plaintiffs in any of the cases listed in Appendix A; provided, however, that no member of the California Class shall be heard, unless his, her or its objection or opposition is made in writing and is filed, together with copies of all other papers and briefs to be submitted to the Court at the hearing on final approval of the Settlement, with the Court no later than the Objection Date, showing proof of service on Lead Counsel for the California Class and counsel for Microsoft.

G. Motion for Court Approval and Entry of Final Judgment. Lead Counsel for the California Class and Microsoft will request that the Court set the hearing on final approval of the settlement for a date that is approximately 90 days after the Notice Ending Date. At least 30 days prior to the date the Court sets for the hearing on final approval of the Settlement, Lead Counsel for the California Class will submit a motion for an Order of Approval and Final Judgment, substantially in the forms attached as Appendices D and E, respectively, and:

1. Determining that Microsoft and the California Class have submitted to the jurisdiction of the Court for purposes of this Settlement, that the Court has personal jurisdiction over Microsoft and all members of the California Class and that the Court has jurisdiction to approve this Settlement Agreement as fair, reasonable and adequate under Section 382 of the California Code of Civil Procedure, Rules 1545 and 1859 of the California Rules of Court, the Local Rules of the San Francisco Superior Court and any other local rules that may be applicable;

2. Finding that the notice provided in this Settlement Agreement (a) constitutes reasonable and the best practicable notice; (b) constitutes notice that is reasonably

calculated, under the circumstances, to apprise members of the California Class of the pendency of this action, the terms of this Settlement, the right to object to this Settlement, and the right to appear at the hearing on final approval; (c) constitutes due, adequate and sufficient notice to all persons or entities entitled to receive such notice; and (d) meets the requirements of due process, the California Code of Civil Procedure, the California Rules of Court, and any other applicable law or rules of the Court;

3. Directing that All Cases (as listed on Appendix A) be dismissed with prejudice and, except as provided for below, without costs;

4. Reserving for the Court exclusive jurisdiction over this Settlement, including the administration, consummation and enforcement of this Settlement, and including all proceedings both before and after the Final Judgment becomes final and is no longer subject to appeal;

5. Determining that there is no just reason for delay and directing that the Final Judgment shall be final and appealable; and

6. Incorporating the release set forth in section III below and forever discharging Microsoft from All Claims.

H. Entry of Final Judgment. If the Court executes the Order of Approval and Final Judgment, the parties will take all necessary steps to ensure that, pursuant to Rule 1545 of the California Rules of Court, the Final Judgment is entered by all of the courts in which the cases listed on Appendix A were pending when those cases were ordered coordinated in *Microsoft Cases*, J.C.C.P. No. 4106.

I. Effect of Disapproval. If the Court for any reason (1) determines not to approve this Settlement Agreement; (2) does not enter the Final Judgment substantially in the form described in section II.G above and Appendix E; or (3) if the Court's approval is modified, reversed or set aside on appeal, then this Settlement Agreement terminates and becomes null and void except as otherwise provided in this Settlement Agreement.

J. Dismissal With Prejudice. Upon final approval of this Settlement, Lead Counsel for the California Class and Microsoft shall join in seeking dismissal with prejudice of All Cases to the extent that the Court does not dismiss All Cases with prejudice in its Order of Approval and Final Judgment.

III. RELEASE

A. Release. Upon Final Approval, each member of the California Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the California 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 which was or could have been alleged in any of the cases listed on Appendix A 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 the Cartwright Act, California Business and Professions Code §§ 16720 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, (g) California's Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.*, (h) California's Unfair Practices Act, California Business and Professions Code §§ 17000 *et seq.* and/or (i) other federal or state law, regulation or common law similar or analogous to any of the above. This Release does not include (a) claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of California, (b) claims arising from purchases directly from Microsoft Corporation of licenses for Microsoft Operating System or Microsoft Application software or (c) claims by competitors of Microsoft in their capacity as competitors. This Release does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 15, 2001.

However, class members hereby release any and all claims described above relating to Microsoft's conduct, acts or omissions that occurred on or prior to December 15, 2001.

B. Waiver of Release Limitations. In addition to the provisions of section III.A above, each member of the California Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases, upon Final Approval, any and all defenses, rights and benefits that the class member may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in section III.A above. Without limiting the generality of the foregoing, each member of the California Class expressly and irrevocably waives any and all defenses, rights and benefits that the class member might otherwise have in relation to the release under or by virtue of the provisions of Section 1542 of the Civil Code of the State of California, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each member of the California Class also expressly and irrevocably waives and fully, finally and forever settles and releases, upon Final Approval, any and all defenses, rights, and benefits that the class member may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

IV. CONSUMER VOUCHERS

A. Consideration. As part of the consideration for the agreement to dismiss All Claims with prejudice, and for entry of the Final Judgment as provided for in the Settlement Agreement, on the Effective Date of the Settlement, Microsoft shall make the Consumer Vouchers described in this section available to all members of the California Class in accordance with the procedures set forth below.

B. Face Value Amount. The Face Value Amount of this Settlement is \$1.1 billion. This amount is based on the best estimate of the number of Category I, Category II, Category III

and Category IV software licenses acquired for use in California during the period from February 18, 1995, to December 15, 2001. Because the parties jointly relied upon this estimate in their negotiations, the Face Value Amount is not subject to change based on new information or legal theories, and each party bears the risk that this estimate is too high or too low. Under no circumstances shall Microsoft be required to provide Consumer Vouchers in excess of the Face Value Amount.

C. Consumer Voucher Amounts. Upon presentation of a satisfactory proof of claim as set forth in section V.A below, each member of the California Class who acquired a Category I, Category II, Category III or Category IV software license in California for use in California during the period from February 18, 1995, to December 15, 2001 may obtain a Consumer Voucher as follows:

1. Members of the California Class who acquired a license for a Category I product in California during the period from February 18, 1995, to December 15, 2001 for use in California will receive a Consumer Voucher worth \$16.00 for each such license.
2. Members of the California Class who acquired a license for a Category II product in California during the period from February 18, 1995, to December 15, 2001 for use in California will receive a Consumer Voucher worth \$5.00 for each such license.
3. Members of the California Class who acquired a license for a Category III product in California during the period from February 18, 1995, to December 15, 2001 for use in California will receive a Consumer Voucher worth \$26.00 for each such license.
4. Members of the California Class who acquired a license for a Category IV product in California during the period from February 18, 1995, to

December 15, 2001 for use in California will receive a Consumer Voucher worth \$29.00 for each such license.

For purposes of determining the appropriate number of vouchers to be awarded, a California Class Member shall be considered to have a separate license for each desktop or laptop computer that is authorized for use in conjunction with the licensed software under the terms of the California Class Member's license agreement. For example, if the California Class Member's license agreement authorizes installation of the software on up to 100 computers, the California Class Member is entitled to 100 vouchers, regardless of whether the software is actually installed on 100 computers, as long as the California Class Member has paid for 100 licenses. For Enterprise Agreement licenses, the California Class Member shall be considered to have a separate license for the initial licenses purchased under the agreement and not for automatic upgrade licenses which they are eligible to receive and install under their Enterprise Agreement. For all other types of licensing arrangements the initial license and each upgrade license shall be counted as separate licenses.

D. Products Covered By The Settlement Agreement. The parties have used their best efforts to ensure that Appendices B-1, B-2, B-3 and B-4 to this Settlement Agreement contain complete lists of the following software products at issue in this litigation: (1) versions of MS-DOS and Windows operating system software (other than operating system software for servers) that were available for purchase during the period from February 18, 1995, through December 15, 2001; and (2) versions of the following types of applications software that were licensed for use with either MS-DOS or Windows and that were available for purchase during the period from February 18, 1995 through December 15, 2001: (a) Word word processing applications, either standalone or included in productivity suite applications other than Office, including Works Suite and Home Essentials; (b) Excel spreadsheet applications; and (c) Office productivity suite applications that include both Word and Excel. If a claimant submits a claim for a product version that falls within one of the categories of software described in this section

IV.D but that is not included on Appendices B-1 through B-4, the Settlement Claims Administrator and the parties will agree to consider the claim, and determine whether the product version will be deemed to be a Category I, Category II, Category III or Category IV product (whichever is appropriate) for purposes of making claims under this Settlement Agreement. If a product version not listed on Appendices B-1 through B-4 is deemed to be a Category I, Category II, Category III or Category IV product (whichever is appropriate) for purposes of making a claim, that product version will also be deemed to be a Microsoft Operating System or a Microsoft Application (whichever is appropriate) for purposes of the release contained in sections III.A and III.B of this Settlement Agreement, the release will apply, and the claimant will be bound by the release.

E. Consumer Voucher Restrictions. The Consumer Vouchers may be aggregated by any claimant possessing a number of any such Consumer Vouchers. The Consumer Vouchers are not redeemable for cash and may not be presented directly to a retailer or computer manufacturer for redemption upon the purchase of the hardware or software described in section IV.G below. The Consumer Vouchers issued to members of the California Class shall expire at the end of the Settlement Period. Consumer Vouchers will be printed with security features, will be serialized and, if possible, will be printed with the name of the Consumer Voucher recipient on the face of the Consumer Voucher.

F. Transfer of Consumer Vouchers. A claimant may transfer up to \$650.00 of the value of any Consumer Vouchers awarded to that claimant. Each Consumer Voucher may be transferred only once. To transfer a Consumer Voucher, the claimant must endorse the Consumer Voucher to a named transferee. A transferee may redeem no more than \$10,000 in transferred Consumer Vouchers. When transferees submit Consumer Vouchers for redemption, they must declare under penalty of perjury that they intend to use the products purchased with the transferred Consumer Vouchers for their own personal or business use, and that they will not directly, indirectly or in concert with others redeem more than \$10,000 of transferred Consumer

Vouchers. Neither claims nor Consumer Vouchers are transferable under any other circumstances.

G. Redemption. Claimants may present the Consumer Vouchers to the Settlement Claims Administrator during the Settlement Period, together with satisfactory proof of purchase (described in section V.B.1 below) of any the following hardware and/or software purchased after the date of preliminary approval of this Settlement Agreement, to receive the face value of the Consumer Vouchers. Otherwise valid Consumer Vouchers will be accepted by the Settlement Claims Administrator if they are postmarked on or before the last day of the Settlement Period and are received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period.

1. Hardware. Claimants may redeem the Consumer Vouchers from the Settlement Claims Administrator during the Settlement Period by presenting satisfactory proof of purchase(s) made after the date of preliminary approval of this Settlement Agreement of any new desktop, laptop or tablet computer for any operating system platform (“Qualifying Hardware”). The definition of Qualifying Hardware excludes servers, personal digital assistants (“PDAs”) and other hand-held devices. The definition of Qualifying Hardware includes the following devices or components (“Peripheral Devices”): printers, scanners, monitors, keyboards and pointing devices (e.g., mouse, trackball, etc.). A member of the California Class whose total claim is less than \$950 may use his or her Consumer Vouchers to purchase Peripheral Devices regardless of whether or not the class member also purchases a computer. All other members of the California Class may use Consumer Vouchers to purchase Peripheral Devices only in connection with the purchase of a computer. The definition of 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).

2. Software. Claimants may redeem the Consumer Vouchers from the Settlement Claims Administrator during the Settlement Period by presenting satisfactory proof of purchase after the date of preliminary approval of this Settlement Agreement of any non-custom software title, including any software title not published by Microsoft, that (a) is designed for use on any Qualifying Hardware described in section IV.G.1 above, and (b) is not software designed to operate on a server (“Qualifying Software”).

V. PROCESSES FOR CLAIMING AND REDEEMING CONSUMER VOUCHERS

A. Step 1. Members of the California Class may claim the Consumer Vouchers described in section IV.C above by mailing a completed Claim Form, together with satisfactory proof of qualification as specified below, to the Settlement Claims Administrator prior to the close of the Claim Period. Completion of this first step (submission of a Claim Form and satisfactory proof of qualification) shall entitle the claimant to receive only a Consumer Voucher and nothing more. Claimants should retain copies of their completed Claim Forms and copies of all other documentation that they submit to the Settlement Claims Administrator with their Claim Forms.

1. Claim Forms. The mailed notice provided pursuant to section II.E.3 above will include a Claim Form to be used by members of the California Class. The emailed notice provided pursuant to section II.E.4 above will include a link to an electronic copy of the Claim Form. In addition, an electronic copy of the Claim Form will be available on the Internet Web site described in section II.E.5 above, which will also contain information on how to make claims. Members of the California Class may also obtain Claim Forms by calling a toll free “800” telephone number established by the Settlement Claims Administrator. The Claim Form will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers.

a. All Claim Forms to be completed by members of the California Class that are not Volume Licensees will require a sworn declaration under penalty of perjury that sets forth the claimant's name, street address, telephone number, either a photocopy of a valid driver's license or the last four digits of a social security number or a taxpayer identification number, email address (optional), and the quantity acquired of each of the four categories of software licenses at issue in this litigation (Category I products, Category II products, Category III products and Category IV products). The Claim Form will also call for the year in which each purchase was made and the identity of the seller. In addition, claims submitted by businesses must include a sworn declaration under penalty of perjury that the software covered by the claim was used in California.

b. All Claim Forms to be completed by members of the California Class that are Volume Licensees will require a sworn declaration under penalty of perjury that sets forth the claimant's name, street address, telephone number, taxpayer identification number, email address (optional), and the quantity acquired of each of the four categories of software licenses at issue in this litigation (Category I products, Category II products, Category III products and Category IV products). In addition, claims must include a sworn declaration under penalty of perjury that the software covered by the claim was used in California.

2. Proof of Qualification (Claims For Up To Five Licenses). A member of the California Class that is not a Volume Licensee may submit up to five (5) license claims not to exceed a total of \$100 supported only by the sworn declaration under penalty of perjury described in section V.A.1.a above. If a member of the California Class that is a Volume Licensee wishes to submit up to five (5) license claims not to exceed a total of \$100 without submitting the documentation specified in section V.A.4 below, that class member must support its submission with the declaration under penalty of perjury described in section V.A.1.a above. The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or

otherwise improper. Any additional license claims will require documentation. A claimant who submits more than five license claims may submit: (a) five license claims not to exceed a total of \$100 supported only by the sworn declaration under penalty of perjury described in section V.A.1.a above; and (b) any additional license claims supported by the documentation described below.

3. Proof of Qualification (Customers Other Than Volume Licensing Customers). A member of the California Class who submits claims for additional licenses (other than volume licenses) beyond the five license claims described in section V.A.2 above must support such claims by providing, prior to the close of the Claim Period, for each license: (1) a sworn declaration under penalty of perjury as described in section V.A.1.a above; and (2) **one** of the following:

- a. the Product Identification (“PID”) number;
- b. the Product Key number that is found on the computer hardware (for preinstalled Microsoft Operating Systems) or printed on the Certificate of Authenticity (“COA”) obtained with the Microsoft Operating System and/or Microsoft Application or that is located on the back of the case for the CD-ROM containing such software;
- c. the original COA; or
- d. printed information obtained from Microsoft’s End User Data.

The Claim Form will clearly explain where the PID, Product Key or COA can be found on the products at issue. The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper. In the absence of the information listed in sections V.A.3.a through V.A.3.d above, claimants may support their claims with such other proof of qualification as the parties and the Settlement Claims Administrator shall agree to accept, or, in the absence of such an agreement, such other proof of qualification as the Special Master(s) described in section V.A.7 may accept.

4. Proof of Qualification (Volume Licensing Customers). A member of the California Class who licensed a Microsoft Operating System and/or Microsoft Application through Microsoft's volume licensing programs (including Open, Select and Enterprise Agreement programs) ("Volume Licensees") must support such claims by providing, prior to the close of the Claim Period, for each license: (1) a sworn declaration under penalty of perjury as described in section V.A.1.b above; and (2) **one** of the following proofs of licensing:

- a. the claimant's license agreement;
- b. license confirmations;
- c. Enterprise Agreement enrollment forms;
- d. interim true-up orders;
- e. eOpen documentation or MVLS documentation; or
- f. printed information obtained from Microsoft's End User Data.

The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper.

5. Access to End User Data. Beginning no later than the Notice Commencement Date and continuing throughout the Claim Period, Microsoft will provide all members of the California Class who are Volume Licensees with simple, streamlined access from the Internet to volume licensing program data in the Microsoft eOpen database and the MVLS database. Data from the MOLP database, and the MSL database will be accessible through Microsoft eOpen and MVLS. Microsoft shall provide simple access instructions in the Claim Form so that members of the California Class who are Volume Licensees may easily print their license information in an understandable format sufficient for them to submit their claims. The Claim Form will inform Volume Licensees that, to the extent their license information is incomplete, Microsoft may have additional license information that is not accessible online.

Beginning no later than the Notice Commencement Date and continuing throughout the Claim Period, Microsoft will also provide members of the California Class who are Volume Licensees with a toll free “800” telephone number to handle inquiries (free of charge) concerning how to access the volume licensing program data in Microsoft eOpen and MVLS. Members of the California Class who are Volume Licensees will be able to call the toll free telephone number to obtain their password, authorization numbers, license numbers and any other information necessary to access such data. Callers will have access to an informed customer service representative within a reasonable time after making their calls.

6. Requesting Microsoft to Search End User Data. If a member of the California Class is unable to attach the types of documentation that will automatically authorize the full amount of its claims (as set forth in sections V.A.3 and V.A.4 above) after making reasonable efforts to do so, it may check a box on its Claim Form that will require Microsoft (with the active supervision of the Settlement Claims Administrator) to search Microsoft’s End User Data to determine whether there is license information in Microsoft’s End User Data that the claimant can use to further document the claim. A representative of Lead Counsel for the California Class may, at its option, monitor the search process. Microsoft shall provide the Settlement Claims Administrator with copies of the necessary portions of Microsoft’s End User Data and the assistance necessary to facilitate access to the claimant’s license information and will communicate that information to the claimant for use in making a claim. The Settlement Claims Administrator shall authorize otherwise valid claims documented by the claimant as further supplemented by the license records found in Microsoft’s End User Data.

7. Other Written Evidence. If a member of the California Class is unable to attach the types of documentation that will automatically authorize the full amount of its claims (as set forth in sections V.A.3 and V.A.4 above), it may submit other credible written evidence (along with a sworn declaration under penalty of perjury as described in section V.A.1 above) to prove its claim. The parties will jointly select one or more Special Masters to review such

additional written evidence. The Special Master(s) may approve the claim based on the additional written evidence if such evidence is clear and convincing. The parties will jointly meet with the Special Master(s) to explain the purpose of the clear and convincing evidence standard. If a claimant only has a sworn declaration or the full amount of a claimant's claim is not approved based on the submitted written documentation, the claimant must appear at a hearing before the Special Master(s) if it wishes to attempt to meet the standard of clear and convincing evidence. The Special Master(s) shall hold hearings throughout the State of California so that no claimant must travel more than 125 miles to appear. Lead Counsel for the California Class and Microsoft shall have the right to present evidence and contest claims at such hearings. The ruling of the Special Master(s) may be appealed to the Court.

8. Approval. The Settlement Claims Administrator will promptly review each claim and make a determination of the number and amount of Consumer Vouchers to be issued to each claimant. The Settlement Claims Administrator shall mail the Consumer Voucher(s) for each claimant whose claim is approved to the address provided by the claimant. The Settlement Claims Administrator shall not be responsible for ensuring that the claimant actually receives the Consumer Voucher.

B. Step 2. To redeem any Consumer Voucher for its face value, a claimant must submit the Consumer Voucher, together with satisfactory proof of purchase of Qualifying Hardware and/or Qualifying Software (as defined in section IV.G above), to the Settlement Claims Administrator. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. Consumer Vouchers and proofs of purchase must be postmarked on or before the last day of the Settlement Period and must be received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period. Claimants should retain copies of their Consumer Vouchers and all other documentation submitted to the Settlement Claims Administrator as proof of purchase of Qualifying Hardware and/or Qualifying Software.

1. Proof of Purchase. The proof of purchase must include (a) the original receipt for the purchase of Qualifying Hardware and/or Qualifying Software, and either (b) a box top or other original packing material with a U.P.C. bar code or a proof-of-purchase mark or (c) other information sufficient to identify the purchased product as Qualifying Hardware and/or Qualifying Software. Subject to section V.D.1 below, the Settlement Claims Administrator will be responsible for determining whether the information submitted is sufficient. The claimant should retain copies of all submitted materials. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. If the amount of the Consumer Vouchers submitted with the proof(s) of purchase exceeds the purchase price of the Qualifying Hardware and/or Qualifying Software, the Settlement Claims Administrator will process such submissions in a manner to be agreed upon by the parties, in consultation with the Settlement Claims Administrator. The parties agree in principle that claimants who make such submissions for less than the full amount of their Consumer Vouchers will be permitted to make multiple submissions of their Consumer Vouchers. The parties, in consultation with the Settlement Claims Administrator, will agree as to the details, rules and procedures for processing such submissions.

2. Limits On Transferability. Except as provided in section IV.F above, once issued, Consumer Vouchers are not transferable to, and may not be redeemed by, any person or entity other than the member of the California Class to whom such Consumer Vouchers were issued, and, as to members of the California Class that are business entities, their legal successors in interest.

3. Approval. Consumer Vouchers, together with all necessary supporting documentation, must be postmarked on or before the last day of the Settlement Period and must be received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period. If the Settlement Claims Administrator approves the submission, the Settlement Claims Administrator shall mail to the claimant a check for the appropriate amount to

the address provided by the claimant. The Settlement Claims Administrator is not responsible for ensuring that the claimant actually receives the check.

C. Combined Claims. A member of the California Class may, at his or her option, submit a Claim Form and satisfactory proof of qualification (as described in section V.A above) and satisfactory proof of purchase of Qualifying Hardware and/or Qualifying Software (as described in section V.B above) at the same time. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. If all of the submitted documentation is satisfactory, and the Settlement is approved and becomes final, the Settlement Claims Administrator shall issue a check to the member of the California Class for the appropriate amount. However, it is possible that (a) some or all of the class member's submitted documentation may not be approved by the Settlement Claims Administrator and that the class member's claims may not be approved, or (b) the Settlement may not be approved or become final and the class member's claims may not be approved.

D. Settlement Claims Administration.

1. The Settlement Claims Administrator, Lead Counsel for the California Class and Microsoft will agree on the rules and procedures that will govern the processing of claims under this Settlement Agreement and the administration of this Settlement generally. If the Settlement Claims Administrator and the parties are unable to agree on any such rules or procedures, the parties shall submit their disagreement to the Court or to a referee appointed by the Court with the consent of the parties for resolution.

2. The Settlement Claims Administrator shall review the Claim Forms and proofs of purchase described in sections V.A, V.B and V.C above to determine whether they contain the required documentation and whether the claims are duplicative or otherwise invalid, and shall reject any invalid claims unless Lead Counsel for the California Class and Microsoft otherwise direct. Lead Counsel for the California Class and Microsoft may work with the

Settlement Claims Administrator to verify the validity of claims through Microsoft's End User Data or other reliable information. If Lead Counsel for the California Class or Microsoft disputes any claim, the Settlement Claims Administrator may request additional documentation from the claimant.

3. In the event a Claim Form or proof of purchase described in sections V.A, V.B or V.C above is rejected by the Settlement Claims Administrator, the Settlement Claims Administrator shall send mailed written notice to the claimant at the address included on the Claim Form, clearly informing the claimant of the deficiency, with copies to Lead Counsel for the California Class and Microsoft. The written notice shall clearly inform the claimant concerning the details of any deficiency and shall provide instructions concerning what must be done to cure any deficiency.

4. The decision concerning the validity of any particular claim or redemption shall be made by the Settlement Claims Administrator, subject to appeal by the claimant, Lead Counsel for the California Class or Microsoft to the Court, whose decision is final for accepted claims. Before appealing a decision of the Settlement Claims Administrator to the Court, counsel for the parties shall attempt to resolve informally any disputes over the Settlement Claims Administrator's decision. To the extent such appeals to the Court must be made, the parties will endeavor to present appeals to the Court in batches, to avoid, to the extent practicable, burdening it with multiple appeals.

5. Microsoft will advise its sales team and PSS team that all inquiries from members of the California Class regarding claims procedures shall be redirected to the Settlement Claims Administrator. Microsoft shall not attempt to induce members of the California Class to give up their claims under this Settlement. Information on Claim Forms will not be made available to Microsoft or any other entity for any purpose other than administration of the claims process under this Settlement Agreement.

E. Costs of Settlement Claims Administration. The Settlement Claims Administrator

shall send Microsoft periodic invoices for the costs of claims administration under this Settlement Agreement. Except as otherwise provided in this section V.E, Microsoft shall pay such costs within 30 days of invoice. If Microsoft believes the amount charged on any invoice is excessive, Microsoft may submit its objections to the Court for resolution and need not pay the disputed amount until the Court has resolved the objections.

VI. CY PRES

A. Cy Pres Remedy. The parties will provide a form of cy pres remedy, which will be available to Eligible Schools. The cy pres remedy will involve the distribution of vouchers (“General Purpose Vouchers” and “Software Vouchers”) to Eligible Schools. The cy pres distribution of General Purpose Vouchers and Software Vouchers to Eligible Schools will occur in two phases: the “First Cy Pres Distribution” (described in section VI.C below) and the “Second Cy Pres Distribution” (described in section VI.D below).

B. Platform Neutrality and Purpose of Cy Pres Program. The cy pres program is intended to be platform neutral. The General Purpose Vouchers and Software Vouchers distributed in the cy pres program may be used for any platform that the school districts choose. The purpose of the cy pres program is to benefit public schools in California at which a substantial percentage of the attending students come from low-income households.

C. The First Cy Pres Distribution. In the event that the total amount of Consumer Vouchers issued pursuant to sections IV.C and V.A above does not exhaust the Face Value Amount, the remaining portion of the Face Value Amount shall be used as follows:

1. Consumer Voucher Totals. Within 30 days after the Date of Final Approval, the Settlement Claims Administrator shall identify the total value of the Consumer Vouchers issued pursuant to sections IV.C and V.A above to members of the California Class. This amount shall be deducted from the Face Value Amount. Sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the difference between the Face Value Amount and the total amount of issued Consumer Vouchers shall be designated as the “First Cy Pres Amount.” The other thirty-three

and one-third percent (33⅓%) of the difference between the Face Value Amount and the total amount of issued Consumer Vouchers shall be not paid out by Microsoft, but shall instead be retained by it.

2. Cy Pres. Fifty percent (50%) of the First Cy Pres Amount shall be in the form of General Purpose Vouchers, and fifty percent (50%) of the First Cy Pres Amount shall be in the form of Software Vouchers.

3. Distribution. The First Cy Pres Distribution shall be made no later than the Effective Date of the Settlement. The General Purpose Vouchers and Software Vouchers made available in the First Cy Pres Distribution will be distributed in accordance with sections VI.F, VI.G and VI.H below. In the event there remain available unclaimed General Purpose Vouchers and/or Software Vouchers at the end of the First Cy Pres Period, such General Purpose Vouchers and/or Software Vouchers shall be distributed in accordance with section VI.L below.

4. General Purpose Vouchers. General Purpose Vouchers distributed in the First Cy Pres Distribution may be redeemed during the First Cy Pres Period for any Qualifying Hardware (as defined in section IV.G.1 above), any non-custom software that could be used with Qualifying Hardware, “Professional Development Services” (as defined in section I.Z above) and/or “IT Support Services” (as defined in section I.T above) used in connection with the hardware or software acquired through use of the General Purpose Vouchers and/or Software Vouchers. Eligible Schools may also use General Purpose Vouchers to purchase: (1) equipment needed for networking and infrastructure (e.g., routers, servers, wireless network cards, or wireless access points); (2) hardware for accessing the internet through television sets (e.g., MSNTV units or comparable technologies in the market) and internet access for such hardware for students’ homes; (3) certification training for software and networking; (4) tablet computers or comparable technology that may become available; (5) non-custom assistive technology devices and non-custom software designed for use by students with special needs; and (6) evaluation tool(s) to assist participating schools in monitoring their use of the General Purpose

Vouchers and Software Vouchers, as well as to assist the California Department of Education in gathering evaluation data on this cy pres program.

5. Software Vouchers. Software Vouchers distributed in the First Cy Pres Distribution may be redeemed during the First Cy Pres Period for current or future Microsoft operating system software (e.g., Microsoft Windows), word processing software (e.g., Microsoft Word), spreadsheet software (e.g., Microsoft Excel), presentation software (e.g., Microsoft PowerPoint), desktop relational database software oriented towards single users and typically residing on a standard personal computer (e.g., Microsoft Access), web-authoring software (e.g., Microsoft Front Page), productivity suite software (e.g., Microsoft Office or Microsoft Works), and encyclopedia software (e.g., Microsoft Encarta) for either personal computers or Macintosh computers, and server software including client access licenses. The Software Vouchers distributed in the First Cy Pres Distribution may also be redeemed during the First Cy Pres Period for non-custom software titles produced by other companies that compete with and/or have substantially similar functionality to the above identified Microsoft software titles or their successors, and can be used with Qualifying Hardware employing either a Microsoft operating system or another operating system. The Software Vouchers distributed in the First Cy Pres Distribution may also be used to cover the cost of the software described in this section VI.C.5 when such software is bundled with a computer purchased with the General Purpose Vouchers. In such circumstances, Software Vouchers may be applied to the bundled operating system software included in the hardware purchase price in an amount equal to the standard academic upgrade price for the operating system software. When any of the other software categories described in this section VI.C.5 is bundled with a computer purchased with the General Purpose Vouchers, the Software Vouchers may be applied in an amount no greater than the standard academic price or, if an academic price is not available, in an amount not to exceed the normal or standard price established by the manufacturer for such software. In addition, Eligible Schools will have reasonable access to the Microsoft Help Desk for assistance in using Microsoft

software obtained using the Software Vouchers, subject to parameters on the scope of such access that will be agreed on by the parties and the California Department of Education and consistent with the level of support given to retail purchasers. However, if such software was pre-installed, then the party originally responsible for providing support for the product will continue to be responsible.

D. The Second Cy Pres Distribution. In the event that the total amount of Consumer Vouchers redeemed during the Settlement Period pursuant to sections IV.G and V.B above is less than the total amount of Consumer Vouchers issued pursuant to sections IV.C and V.A above, the unredeemed amounts shall be used as follows:

1. Consumer Voucher Totals. Within 45 days after the close of the Settlement Period, the Settlement Claims Administrator shall identify the total value of the Consumer Vouchers redeemed pursuant to sections IV.G and V.B above by members of the California Class. This amount shall be deducted from the total value of the Consumer Vouchers issued pursuant to sections IV.C and V.A above. Sixty-six and two-thirds percent (66⅔%) of the difference between the total amount of issued Consumer Vouchers and the total amount of redeemed Consumer Vouchers shall be designated as the “Second Cy Pres Amount.” The other thirty-three and one-third percent (33⅓%) of the difference between the total amount of issued Consumer Vouchers and the total amount of redeemed Consumer Vouchers shall be not paid out by Microsoft, but shall instead be retained by it.

2. Cy Pres. Fifty percent (50%) of the Second Cy Pres Amount shall be in the form of General Purpose Vouchers, and fifty percent (50%) of the Second Cy Pres Amount shall be in the form of Software Vouchers.

3. Distribution. The Second Cy Pres Distribution shall be made no later than 60 days after the end of the Settlement Period. The General Purpose Vouchers and Software Vouchers made available in the Second Cy Pres Distribution will be distributed in accordance with sections VI.F, VI.G and VI.H below. In the event there remain available unclaimed General

Purpose Vouchers and/or Software Vouchers at the end of the Second Cy Pres Period, such General Purpose Vouchers and/or Software Vouchers shall be distributed in accordance with section VI.L below.

4. General Purpose Vouchers. General Purpose Vouchers distributed in the Second Cy Pres Distribution may be redeemed during the Second Cy Pres Period for any Qualifying Hardware (as defined in section IV.G.1 above), any non-custom software that could be used with Qualifying Hardware, “Professional Development Services” (as defined in section I.Z above) and/or “IT Support Services” (as defined in section I.T above) used in connection with the hardware or software acquired through use of the General Purpose Vouchers and/or Software Vouchers. Eligible Schools may also use General Purpose Vouchers to purchase: (1) equipment needed for networking and infrastructure (e.g., routers, servers, wireless network cards, or wireless access points); (2) hardware for accessing the internet through television sets (e.g., MSNTV units or comparable technologies in the market) and internet access for such hardware for students’ homes; (3) certification training for software and networking; (4) tablet computers or comparable technology that may become available; (5) non-custom assistive technology devices and non-custom software designed for use by students with special needs; and (6) evaluation tool(s) to assist participating schools in monitoring their use of the General Purpose Vouchers and Software Vouchers, as well as to assist the California Department of Education in gathering evaluation data on this cy pres program.

5. Software Vouchers. Software Vouchers distributed in the Second Cy Pres Distribution may be redeemed during the Second Cy Pres Period for current or future Microsoft operating system software (e.g., Microsoft Windows), word processing software (e.g., Microsoft Word), spreadsheet software (e.g., Microsoft Excel), presentation software (e.g., Microsoft PowerPoint), desktop relational database software oriented towards single users and typically residing on a standard personal computer (e.g., Microsoft Access), web-authoring software (e.g., Microsoft Front Page), productivity suite software (e.g., Microsoft Office or Microsoft Works),

and encyclopedia software (e.g., Microsoft Encarta) for either personal computers or Macintosh computers, and server software including client access licenses. The Software Vouchers distributed in the Second Cy Pres Distribution may also be redeemed during the Second Cy Pres Period for non-custom software titles produced by other companies that compete with and/or have substantially similar functionality to the above identified Microsoft software titles or their successors, and can be used with Qualifying Hardware employing either a Microsoft operating system or another operating system. The Software Vouchers distributed in the Second Cy Pres Distribution may also be used to cover the cost of the software described in this section VI.D.5 when such software is bundled with a computer purchased with the General Purpose Vouchers. In such circumstances, Software Vouchers may be applied to the bundled operating system software included in the hardware purchase price in an amount equal to the standard academic upgrade price for the operating system software. When any of the other software categories described in this section VI.D.5 is bundled with a computer purchased with the General Purpose Vouchers, the Software Vouchers may be applied in an amount no greater than the standard academic price or, if an academic price is not available, in an amount not to exceed the normal or standard price established by the manufacturer for such software. In addition, Eligible Schools will have reasonable access to the Microsoft Help Desk for assistance in using the Microsoft software obtained using the Software Vouchers, subject to parameters on the scope of such access that will be agreed on by the parties and the California Department of Education and consistent with the level of support given to retail purchasers. However, if such software was pre-installed, then the party originally responsible for providing support for the product will continue to be responsible.

E. Administrative Expenses. The California Department of Education may use up to \$550,000.00 to pay for administrative support, including staff and operating expenses incurred in connection with the cy pres program. The percentage of these administrative costs to be paid from the funds allocated to the General Purpose Vouchers, and the percentage of the

administrative costs to be paid from the funds allocated to the Software Vouchers shall be determined by the California Department of Education after considering the expected needs of the Eligible Schools for the benefits provided by each of the voucher funds. These funds shall be available to the California Department of Education only to the extent that they are used to supplement, rather than supplant, other State funding for the operation of the California Department of Education that would have been available in the absence of this Settlement Agreement.

F. Distribution of General Purpose Vouchers and Software Vouchers. The California Department of Education will agree with the Settlement Claims Administrator, Lead Counsel for the California Class, and counsel for Microsoft on the procedures for implementing the platform neutral distribution of the General Purpose Vouchers and Software Vouchers to Eligible Schools described above. The California Department of Education, the Settlement Claims Administrator, Lead Counsel for the California Class, and counsel for Microsoft will also agree on the role of the Department in developing the application and scoring process to ensure that the General Purpose Vouchers and the Software Vouchers are allocated to Eligible Schools for use in a manner consistent with State Academic Content Standards and effective integration of technology.

G. Application by School Districts. School districts in which potentially Eligible Schools are located will be required to apply on behalf of such potentially Eligible Schools for the General Purpose Vouchers and Software Vouchers made available in this cy pres program. County offices of education, direct funded charter schools, and the State Special Schools for deaf and blind students (collectively "Individual Eligible Schools") may apply on their own behalf and may receive benefits under this cy pres program if they meet the definition of Eligible Schools set forth in section I.O above. A school district must have a State-approved district technology plan before it may receive General Purpose Vouchers or Software Vouchers under the Settlement Agreement. A district that contains potentially Eligible Schools but that does not

have a State-approved district technology plan will be referred to the California Technology Assistance Project for assistance in developing a district technology plan.

H. Access to General Purpose Vouchers and Software Vouchers. Access to the General Purpose Vouchers and Software Vouchers described above shall be provided either directly to school districts that serve Eligible Schools, directly to Individual Eligible Schools, or to the California Department of Education for distribution to Eligible Schools. Both the General Purpose Vouchers and the Software Vouchers may only be used in Eligible Schools, except that server products may be used by a school district for the benefit of both Eligible Schools and ineligible schools within the district, so long as the Eligible Schools receive a substantial benefit from such use. General Purpose Vouchers and Software Vouchers may also be used to make future acquisitions of software titles eligible under this cy pres program pursuant to license agreements to which the school district, the Individual Eligible School or the California Department of Education is a party. In such circumstances, the price of the eligible software to which the vouchers may be applied is the price specified for such software in the applicable license agreement. The district, the Individual Eligible School or the California Department of Education shall put in place procedures for determining the entitlement of Eligible Schools to the General Purpose Vouchers and Software Vouchers for use at the Eligible Schools themselves, as well as for distribution by the Eligible Schools to school-sponsored programs that make technology available to students after school hours. Eligible Schools may also select a licensing solution that gives students the option to use the software at home. The California Department of Education in conjunction with the Settlement Claims Administrator shall exercise its discretion to determine whether particular schools meet the eligibility standards to receive General Purpose Vouchers and/or Software Vouchers under the cy pres program as well as the appropriateness of using the General Purpose Vouchers and/or Software Vouchers to acquire specific hardware products, software products, Professional Development Services or IT Support Services. The California Department of Education may not, without the agreement of the parties

or, absent such agreement, an order of the Court, alter the material terms of the cy pres program regarding the definition of Eligible Schools, or the categories or types of hardware products, software products, Professional Development Services and IT Support Services for which the General Purpose Vouchers and Software Vouchers may be used.

I. Compliance. The California Department of Education will not assume responsibility for auditing the Eligible Schools' compliance with the cy pres program and/or expenditures in connection with the cy pres program. The Department will complete certain follow-up implementation activities such as conducting a limited number of post-implementation visits to Eligible Schools and requesting "End of Grant" certification forms, but the Department will not assume fiscal responsibility for either the General Purpose Vouchers or the Software Vouchers, nor will it provide a guarantee that Eligible Schools will make full or appropriate use of the General Purpose Vouchers and/or Software Vouchers they receive.

J. "Approved Providers" of Professional Development Services and IT Support Services. The California Department of Education will develop the process for determining how providers become "approved providers" for the Professional Development Services and IT Support Services available under the General Purpose Voucher program. However, the list of "approved providers" developed by the Department must be platform neutral and must include some providers that will offer PC-based services and Microsoft software services. The Department will take steps to ensure that this process promotes high-quality professional development aligned with State efforts to improve education.

K. Monitoring and Interim Meetings. The California Department of Education will be required to monitor the Eligible Schools' redemption of the General Purpose Vouchers and Software Vouchers. The California Department of Education shall report annually to the parties and the Court on the redemption rates of the General Purpose Vouchers and the Software Vouchers, as well as the problems and successes of the cy pres program. It is agreed that all of the proceeds of the cy pres program are to be distributed and none shall revert back to Microsoft.

It is the intent of the parties that, to the extent consistent with the needs and requirements of the Eligible Schools, all of the benefits of this cy pres program distributed in the First Cy Pres Distribution are to be distributed to Eligible Schools prior to the end of the First Cy Pres Period, and all of the benefits of this cy pres program distributed in the Second Cy Pres Distribution are to be distributed to Eligible Schools prior to the end of the Second Cy Pres Period. Lead Counsel for the California Class and counsel for Microsoft will meet annually with the California Department of Education to discuss the implementation and operation of the cy pres program, including specifically the redemption of the General Purpose Vouchers and Software Vouchers by the Eligible Schools. In the event that the California Department of Education determines that the General Purpose Vouchers and/or Software Vouchers are not being utilized at a reasonable rate or consistent with the intentions of the parties in establishing this cy pres program, it shall make recommendations to the parties concerning possible modifications to the program to facilitate the realization of those intentions. Possible modifications may include, but are not limited to, changes in the eligibility criteria for schools or an extension of the First Cy Pres Period and/or the Second Cy Pres Period. However, any changes to the program shall not materially alter the cost of the program to Microsoft. The parties and the California Department of Education will endeavor to agree on any proposed changes to the program. In the event that no agreement is reached, the parties will present the issue to the Court for prompt resolution.

L. Excess General Purpose Vouchers And/Or Software Vouchers. Neither the California Department of Education nor any school district is authorized to resell any excess General Purpose Vouchers and/or Software Vouchers that are not used by Eligible Schools. In the event there remain available General Purpose Vouchers and/or Software Vouchers that have not been used or distributed at the end of the First Cy Pres Period, Lead Counsel for the California Class and Microsoft will agree to either (1) extend the First Cy Pres Period to allow the California Department of Education to distribute the remaining available General Purpose Vouchers and/or Software Vouchers to Eligible Schools or (2) offer the remaining available

General Purpose Vouchers and/or Software Vouchers to other needy organizations in California, to be jointly selected (with court approval) by the parties. In the event there remain available General Purpose Vouchers and/or Software Vouchers that have not been used or distributed at the end of the Second Cy Pres Period, Lead Counsel for the California Class and Microsoft will agree to either (1) extend the Second Cy Pres Period to allow the California Department of Education to distribute the remaining available General Purpose Vouchers and/or Software Vouchers to Eligible Schools or (2) offer the remaining available General Purpose Vouchers and/or Software Vouchers to other needy organizations in California, to be jointly selected (with court approval) by the parties.

M. Vendor Invoices And Certification for Software. When software that is acquired by Eligible Schools under this cy pres program is not pre-installed on Qualifying Hardware, the General Purpose Vouchers and Software Vouchers may be used to pay for such software only if the vendor provides an invoice with a separate price for software that can be purchased with General Purpose Vouchers and/or Software Vouchers, and certifies that the price charged for such software is no greater than its standard academic price or, if an academic price is not available, is the normal or standard price charged by the vendor for such software. When computer hardware, Professional Development Services or IT Support Services are acquired by Eligible Schools under this cy pres program, the General Purpose Vouchers may be used to pay for such products and services only if the vendor provides an invoice with separate prices for such products and services and certifies that these prices are no greater than its standard academic prices or, if academic prices are not available, are the normal or standard prices charged by the vendor for such products and services. The Settlement Claims Administrator shall verify by audit or otherwise such certifications and the use of the General Purpose Vouchers and Software Vouchers under this program generally. As part of the verification process, the Settlement Claims Administrator may request assistance or information from the parties to this Settlement Agreement.

N. Non-Displacement of Other Charitable and Educational Activities. Microsoft undertakes its obligations under this Settlement Agreement in addition to its existing corporate charitable giving. Microsoft does not intend to reduce below fiscal year 2001 levels its national charitable giving of cash for a period of 6 years after this Settlement is approved because of the Settlement in this case. This provision does not relate to Microsoft's program of matching employees' gifts. If Microsoft reduces its national charitable giving below fiscal year 2001 levels in any year covered by this provision, it will provide Lead Counsel for the California Class with a sworn declaration by an officer of Microsoft that Microsoft did not discriminate against California with respect to any such reduction and that the reduction was not made because of the Settlement in this case.

VII. OTHER PROVISIONS

A. No Admission. By entering into this Settlement Agreement, neither party admits the truth of any of the assertions, claims or allegations made by the other party in any of the cases listed in Appendix A. Microsoft specifically denies each and every one of the allegations of liability, wrongdoing, unlawful conduct and damages in All Cases. It is expressly understood and agreed that this Settlement Agreement is being entered into solely for the purpose of amicably resolving All Claims between Microsoft and the California Class. The Settlement does not, in any way, embody, reflect, or imply any wrongdoing on the part of Microsoft or any of its directors, officers, employees, attorneys, insurers or agents, and the parties may not represent that it does in any public statement and may not use it for that purpose in any subsequent legal proceeding.

B. Attorneys' Fees and Costs. Microsoft agrees to pay reasonable attorneys' fees and costs in an amount to be determined by the Court for work performed by all counsel for plaintiffs in the cases listed in Appendix A in connection with this litigation. The notice of this Settlement that is disseminated pursuant to Section ILE above will specify the maximum amount of attorneys' fees and costs that Lead Counsel for the California Class will request on behalf of

all counsel for plaintiffs in the cases listed in Appendix A. Microsoft and Lead Counsel for the California Class represent that they have not discussed the amount of fees and costs to be paid to all counsel for the plaintiffs in the cases listed in Appendix A prior to agreement on the terms of this Settlement Agreement. Lead Counsel for the California Class and counsel for Microsoft will attempt to negotiate the amount of attorneys' fees and costs to be paid to all plaintiffs' counsel after the execution of this Settlement Agreement. If the parties reach an agreement as to the amount of attorneys' fees and costs, the parties will submit the negotiated amount to the Court for approval. If the parties do not reach an agreement as to the amount of attorneys' fees and costs, the parties will litigate the fee issues, and each party will present its respective position to the Court for determination.

Pursuant to Pretrial Order No.1: Case Management, Lead Counsel for the California Class shall review and audit the requests for attorneys' fees and costs submitted to them by all other plaintiffs' counsel. Lead Counsel for the California Class shall then file a motion for approval of attorneys' fees and costs, on behalf of the Executive Committee and all other plaintiffs' counsel with whom Lead Counsel for the California Class reach agreement as to the appropriate amount of fees and costs to be paid to those counsel. In the motion, Lead Counsel for the California Class shall identify any of plaintiffs' counsel with whom it could not reach such an agreement, and shall make a recommendation as to the appropriate amount of attorneys' fees and costs, if any, to be paid to those counsel. Lead Counsel for the California Class, and any other plaintiffs' counsel who could not reach agreement with Lead Counsel for the California Class and who wish to file separate motions for attorneys' fees and costs, will file their motions for approval of attorneys fees and costs at least 60 days prior to the date set for hearing on the final approval of the Settlement. Microsoft will respond to those motions at least 30 days prior to the hearing, and Lead Counsel and any other plaintiffs' counsel who filed separate motions for attorneys' fees and costs will file their replies at least 15 days prior to the date set for the hearing on final approval, unless the Court approves a different schedule.

However, the litigation of the fee issues will be subject to the parties' current stipulation that provides: (1) the attorneys' fees and costs will be paid by Microsoft in addition to the recovery to the California Class and the cy pres remedy described in this Settlement Agreement; (2) the attorneys' fees will be determined upon the basis of the "common fund" doctrine rather than as a "prevailing party" or statutory fee, with each party being free to argue for what it believes is a reasonable fee; and (3) the "common fund" created by the litigation will be no less than the Consumer Vouchers with a Face Value Amount of \$1.1 billion plus the cost of administration; (4) Microsoft and Lead Counsel for the California Class will request that the Court issue an Order setting forth the amount to be paid in attorneys' fees and costs, specifying that this amount constitutes the total attorneys' fees and costs to be paid by Microsoft in this action, and providing that counsel for plaintiffs in the cases listed on Appendix A will not be permitted to seek additional fees and costs after the Court has made its award. Attorneys' fees and costs shall be payable within 30 days after the Date of Final Approval. The parties shall have the right to appeal the Court's determination as to the amount of attorneys' fees and costs. Microsoft reserves all rights to object to an award of attorneys' fees and/or costs beyond what it believes to be reasonable.

C. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, each member of the California Class, Microsoft, and their respective successors, assigns and subsidiaries.

D. Choice of Law. This Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

E. Discovery Materials.

1. All discovery materials and information (including but not limited to documents; responses to interrogatories, document requests, subpoenas or other oral or written requests; transcripts (including but not limited to deposition transcripts) of any kind and in any

medium; privilege logs; and all data furnished or stored by electronic means (including but not limited to CDs, computer files, emails and attachments and tape storage units)) produced or provided by any of the parties or non-parties either before, on or after the date of this Settlement Agreement, whether produced or provided informally or pursuant to discovery requests, shall be governed by all Confidentiality/Protective Orders in force as of the date of this Settlement Agreement, including specifically paragraph 32 of the Protective Order dated April 20, 2000, subject to such modifications, if any, that the Court may make to such Confidentiality/Protective Orders as the result of any agreements between Lead Counsel for the California Class and Microsoft or as the result of any future motions or proceedings.

2. Notwithstanding the above, Lead Counsel for the California Class may retain, subject to all applicable confidentiality orders, one file copy each of any pleadings, motions, briefs or affidavits that have been filed with the Court or any special master appointed by the Court.

F. Execution in Counterparts. The signatories to this Settlement Agreement may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all counsel had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date of this Settlement Agreement, but the original signature pages shall subsequently be appended to this Settlement Agreement and filed with the Court.

G. Integrated Agreement. This Settlement Agreement (with its appendices and expressly incorporated documents) contains the entire, complete and integrated statement of each and every term and provision agreed to by Lead Counsel for the California Class and Microsoft, and is not subject to any condition not provided for in this Settlement Agreement. This Settlement Agreement shall not be modified in any respect except by a writing executed by all signatories to the Settlement Agreement. In entering into this Settlement Agreement, neither

Lead Counsel for the California Class nor Microsoft has made or relied on any warranty or representation not specifically set forth in the document.

H. Jurisdiction. The Superior Court of California, County of San Francisco, shall have exclusive jurisdiction over all provisions of this Settlement Agreement and over any and all disputes of any kind relating in any way to, or arising in any way out of, this Settlement Agreement.

I. Notice. Any notice, request, instruction or other document to be given by Microsoft to Lead Counsel for the California Class, or vice versa, shall be in writing and (a) delivered personally, or (b) sent by Federal Express, facsimile and by Certified Mail, Return Receipt Requested.

If to Microsoft:

Richard Wallis
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052

Robert A. Rosenfeld
HELLER EHRMAN WHITE & McAULIFFE LLP
333 Bush Street
San Francisco, CA 94104
(415) 772-6000

David B. Tulchin
Michael Lacovara
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

Steve W. Berman
HAGENS BERMAN LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
(206) 623-7292

If to the California Class:

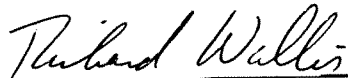
Eugene Crew

Richard L. Grossman
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 576-0200

IN WITNESS WHEREOF, Lead Counsel for the California Class and Microsoft have
duly executed this Settlement Agreement on this 16th day of June, 2003.

AGREED to this 16th day of June, 2003.

Counsel for Microsoft Corporation



Richard Wallis
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052

Robert A. Rosenfeld
HELLER EHRMAN WHITE & McAULIFFE LLP
333 Bush Street
San Francisco, CA 94104
(415) 772-6000

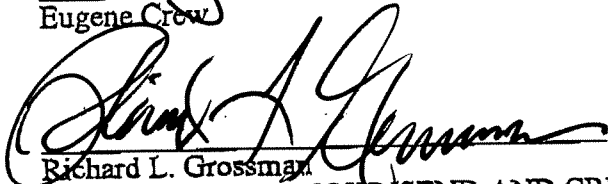
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Steve W. Berman
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Lead Counsel for the California Class



Eugene Crew



Richard L. Grossman
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 576-0200

APPENDIX A

<i>Case Name</i>	<i>Case Number</i>	<i>Court</i>
Microsoft Cases	J.C.C.P. No. 4106	California Superior Court, San Francisco County
AO/Net Universal, Inc. v. Microsoft	No. CV 996383	California Superior Court, Marin County (coordinated under J.C.C.P. 4106)
Bliss v. Microsoft	No. GIC739082	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)
Bushin v. Microsoft	No. GIC739337	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)
Clement & Barry v. Microsoft	No. 309998	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Crain v. Microsoft	No. CV 99-1740	California Superior Court, Yolo County (coordinated under J.C.C.P. 4106)
Darby v. Microsoft	No. 308288	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Davis Instruments Corp. v. Microsoft	No. 308797	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Dunham v. Microsoft	No. 223291	California Superior Court, Sonoma County (coordinated under J.C.C.P. 4106)
Fisher v. Microsoft	No. 308120	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)

GCA Strategies, Inc. v. Microsoft	No. 309232	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Haynes v. Microsoft	No. 308976	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Kelley v. Microsoft	No. GIC740413	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)
Lang v. Microsoft	No. 309235	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Lara v. Microsoft	No. BC220860	California Superior Court, Los Angeles County (coordinated under J.C.C.P. 4106)
Lea v. Microsoft	No. 308067	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Lingo v. Microsoft	No. 301357	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Mission Gorge Computer Outlet v. Microsoft	No. GIC739153	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)
Montgomery Partners, Inc. v. Microsoft	No. 307970	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Paben v. Microsoft	No. 309676	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Piculell v. Microsoft	No. 308083	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)

Podell v. Microsoft	No. 308366	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Saams v. Microsoft	No. 308015	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Smith v. Microsoft	No. 309734	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Tazbaz v. Microsoft	No. GIC739158	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)
Williams v. Microsoft	No. 308390	California Superior Court, San Francisco County (coordinated under J.C.C.P. 4106)
Wilson v. Microsoft	No. 817089	California Superior Court, Orange County (coordinated under J.C.C.P. 4106)
Wood v. Microsoft	No. GIC738730	California Superior Court, San Diego County (coordinated under J.C.C.P. 4106)

APPENDIX B

APPENDIX B-1

Versions of MS-DOS and Windows operating system software (other than operating system software for servers) that were available for purchase during the period from February 18, 1995 through December 15, 2001, including:

<i>Product Title/Edition</i>	<i>Version</i>
MS-DOS	1.0
MS-DOS	2.0
MS-DOS	2.11
MS-DOS	3.1
MS-DOS	3.2
MS-DOS	3.21
MS-DOS	3.22
MS-DOS	3.3
MS-DOS	3.5
MS-DOS	4.0
MS-DOS	4.01
MS-DOS	4.2
MS-DOS	5.0
MS-DOS	6.0
MS-DOS	6.2
MS-DOS	6.21
MS-DOS	6.22
Windows	1.0
Windows	2.0
Windows	2.1
Windows	2.11
Windows	3.0
Windows	3.1
Windows	3.11
Windows	3.2
Windows for Workgroups	1.0
Windows for Workgroups	3.0
Windows for Workgroups	3.1
Windows for Workgroups	3.11
Windows 95	
Windows 98	
Windows 98 Second Edition	
Windows Millennium	
Windows 2000	
Windows 2000 Professional	

APPENDIX B-1

<i>Product Title/Edition</i>	<i>Version</i>
Windows NT Workstation	1.0
Windows NT Workstation	3.1
Windows NT Workstation	3.11
Windows NT Workstation	3.4
Windows NT Workstation	3.5
Windows NT Workstation	3.51
Windows NT Workstation	4.0
Windows NT Workstation	4.21

APPENDIX B-2

Versions of Word word processing applications (either standalone or included in productivity suite applications other than Office) that were licensed for use with either MS-DOS or Windows and that were available for purchase during the period from February 18, 1995 through December 15, 2001, including:

<i>Product Title/Edition</i>	<i>Version</i>
Word	1.0
Word	1.1
Word	1.15
Word	1.2
Word	2.0
Word	2.01
Word	3.0
Word	3.1
Word	4.0
Word	5.0
Word	5.1
Word	5.5
Word	6.0
Word	6.01
Word	7.0
Word	7.1
Word 95	
Word 97	
Word 98	
Word 2000	
Word 2002	
Home Essentials 97	
Home Essentials 98	
Works Suite 99	
Works Suite 2000	
Works Suite 2001	
Works Suite 2002	

APPENDIX B-3

Versions of Excel spreadsheet applications that were licensed for use with either MS-DOS or Windows and that were available for purchase during the period from February 18, 1995 through December 15, 2001, including:

<i>Product Title/Edition</i>	<i>Version</i>
Excel	1.0
Excel	1.1
Excel	2.0
Excel	2.1
Excel	2.2
Excel	2.21
Excel	3.0
Excel	4.0
Excel	5.0
Excel	6.0
Excel	7.0
Excel 95	
Excel 97	
Excel 2000	
Excel 2002	

APPENDIX B-4

Versions of Office productivity suite applications that include both Word and Excel, that were licensed for use with either MS-DOS or Windows and that were available for purchase during the period from February 18, 1995 through December 15, 2001, including:

<i>Product Title/Edition</i>	<i>Version</i>
Office	1.0
Office	1.5
Office	1.6
Office	2.0
Office	2.5
Office	3.0
Office	3.2
Office	4.0
Office	4.1
Office	4.2
Office	4.21
Office	4.3
Office	4.5
Office	7.0
Office 95	
Office 97	
Office 2000	
Office XP	
Office Professional	1.0
Office Professional	3.0
Office Professional	4.0
Office Professional	4.1
Office Professional	4.2
Office Professional	4.21
Office Professional	4.3
Office Professional	7.0
Office 95 Professional	
Office 97 Professional	
Office 2000 Professional	
Office 2002 Professional	
Office XP Professional	
Office XP Professional Special Edition	
Office 2000 Premium	
Office Small Business	7.0
Office 97 Small Business	

APPENDIX B-4

<i>Product Title/Edition</i>	<i>Version</i>
Office 97.2 Small Business	
Office 2000 Small Business	
Office XP Small Business	

APPENDIX C

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

COORDINATION PROCEEDING SPECIAL
TITLE [RULE 1550(b)]

J.C.C.P. No.: 4106

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

MICROSOFT CASES

The Honorable Paul H. Alvarado

WHEREAS, Lead Counsel for the California Class (as defined in the Settlement Agreement dated June ____, 2003), acting on behalf of and with full authority from counsel for all plaintiffs in this litigation in accordance with Pretrial Order No. 1: Case Management, attached to this Order as Exhibit A, has applied for an order preliminarily approving the terms and conditions of the Settlement as set forth in the Settlement Agreement together with the Appendices attached to the Settlement Agreement, approving the form and manner of notice, and scheduling a hearing on final approval of the Settlement;

WHEREAS, the Settlement requires, among other things, that All Claims (as defined in the Settlement Agreement) against Microsoft be settled and compromised;

WHEREAS, Lead Counsel for the California Class has identified the maximum amount of attorneys' fees and costs it will seek on behalf of itself and other counsel for plaintiffs in this litigation pursuant to Pretrial Order No. 1: Case Management, and will file a motion in support of

APPENDIX C

1 that request in accordance with the schedule specified in paragraph 7 of this Order; and

2 WHEREAS, this Court having considered the Settlement Agreement and the Appendices
3 attached to the Settlement Agreement;

4 NOW, THEREFORE, pursuant to Section 382 of the California Code of Civil Procedure
5 and Rules 1545 and 1859 of the California Rules of Court, it is hereby ORDERED that:

6 1. The terms defined in the Settlement Agreement are incorporated in this Order.

7 2. The Court appoints _____ as the Settlement Claims
8 Administrator.

9 3. The Court preliminarily approves the Settlement as set forth in the Settlement
10 Agreement, subject to the right of any member of the California Class (as defined in the Settlement
11 Agreement) to challenge the fairness, reasonableness or adequacy of the Settlement Agreement, to
12 present any opposition to the request(s) for attorneys' fees and costs submitted by Lead Counsel for
13 the California Class or by any other counsel for plaintiffs in these coordinated proceedings, and to
14 show cause, if any exists, why a final judgment dismissing All Claims should not be ordered after
15 due and adequate notice to the California Class as set forth in the Settlement Agreement and after a
16 hearing on final approval.

17 4. The Court, having considered the forms of notice proposed by the parties, approves
18 the Forms of Notice and manner of notice and finds that the Forms of Notice attached to this Order
19 fairly and adequately inform the members of the California Class of their rights regarding the
20 Settlement, including their right to object to the Settlement, to oppose the request(s) for attorneys'
21 fees and costs submitted by Lead Counsel for the California Class and by other counsel for
22 plaintiffs in these coordinated proceedings, and to appear at the hearing on final approval of the
23 Settlement. The Court finds that the notice (including, but not limited to the Forms of Notice and
24 the methods of giving notice to the class) is the best notice practicable under the circumstances and
25 fully satisfies the requirements of due process, the California Code of Civil Procedure, the
26 California Rules of Court, and any other applicable law or rules of the Court.

27 5. As of the date of this Order, all discovery and other proceedings in this litigation,
28 including trial, shall be stayed and suspended until further order of the Court, except as may be

APPENDIX C

1 necessary to implement the Settlement or comply with the terms of the Settlement Agreement;
2 provided, however, that this Order does not preclude Lead Counsel for the California Class from
3 conducting the discovery authorized by this Court's Order Modifying The Discovery Cutoff, dated
4 February 11, 2003, or engaging in further legal proceedings to enforce that discovery.

5 6. All protective orders in force as of the date of this Order are amended to apply to,
6 cover and protect Confidential and Highly Confidential materials and information provided by
7 Microsoft, and by non-parties in response to the discovery authorized by this Court's Order
8 Modifying The Discovery Cutoff, dated February 11, 2003, in connection with this Settlement
9 (including but not limited to information with respect to the potential or actual members of the
10 California Class). In addition, neither party will divulge offers, counter-offers, draft agreements,
11 compromises or proposals made during the course of settlement negotiations.

12 7. The Court hereby schedules a hearing to occur on _____, 2003, at _____
13 a.m. in Department 305 of the Superior Court of California, County of San Francisco, 400
14 McAllister Street, San Francisco, California 94102, to determine whether: (a) the proposed
15 Settlement, as set forth in the Settlement Agreement, should be finally approved as fair, reasonable
16 and adequate pursuant to Section 382 of the California Code of Civil Procedure and Rules 1545 and
17 1859 of the California Rules of Court; (b) an Order of Approval approving the Settlement
18 Agreement and a Final Judgment should be entered; and (c) the application(s) of Lead Counsel for
19 the California Class, acting pursuant to Pretrial Order No. 1: Case Management, and any other
20 counsel for plaintiffs in these coordinated cases for an award of attorneys' fees, costs and expenses
21 of litigation for all counsel involved in this matter should be approved. No later than 60 days
22 before the hearing, all relevant briefs of counsel for any plaintiffs, including Lead Counsel for the
23 California Class, in support of their application(s) for an award of attorneys' fees, costs and
24 expenses of litigation shall be filed. No later than 45 days before the hearing, all relevant briefs and
25 papers shall be filed and served by objectors to the Settlement or those opposing the request for
26 attorneys' fees or costs included in the class notice. No later than 30 days before the hearing, all
27 relevant briefs in support of the Settlement shall be filed. In addition, no later than 30 days before
28 the hearing, Microsoft shall file any briefs and papers in opposition to the application(s) for

APPENDIX C

1 attorneys' fees and costs submitted by Lead Counsel for the California Class or by any other
2 plaintiffs' counsel. No later than 15 days before the hearing, all relevant reply briefs and papers
3 shall be filed and served by Lead Counsel for the California Class and any other plaintiffs' counsel
4 in support of their application(s) for attorneys' fees and costs.

5 8. Neither this Order, the Settlement Agreement, the Settlement reflected in the
6 Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance
7 of the Settlement Agreement or the Settlement is or may be used as an admission or evidence: (a) of
8 the validity of any claims, alleged wrongdoing or liability of Microsoft; or (b) of any fault or
9 omission of Microsoft in any civil, criminal or administrative proceeding in any court,
10 administrative agency or other tribunal.

11 9. The Court may, for good cause, extend any of the deadlines set forth in this Order
12 and/or adjourn the date of the hearing on final approval of this Settlement without further notice to
13 the members of the California Class.

14
15 IT IS SO ORDERED.

16
17 DATED: _____, 2003

18 _____
19 The Honorable Paul H. Alvarado
20 Judge of the Superior Court
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APPENDIX D

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

COORDINATION PROCEEDING SPECIAL
TITLE [RULE 1550(b)]

J.C.C.P. No.: 4106

ORDER APPROVING SETTLEMENT

The Honorable Paul H. Alvarado

MICROSOFT CASES

WHEREAS, on _____ this Court entered an Order preliminarily approving the terms and conditions of this Settlement (as reflected in the Settlement Agreement dated June ____, 2003, together with the Appendices to the Settlement Agreement);

WHEREAS, the Settlement requires, among other things, that All Claims (as defined in the Settlement Agreement) against Microsoft be settled and compromised;

WHEREAS, this matter has come before this Court on a motion by Lead Counsel for the California Class, acting on behalf of and with full authority from counsel for all plaintiffs in the litigation pursuant to Pretrial Order No. 1: Case Management, for final approval of the Settlement Agreement; and

WHEREAS, this Court, having considered all papers filed and proceedings held in connection with said motion, having held a hearing on _____, notice of the hearing

APPENDIX D

1 having duly been given in accordance with this Court’s Order dated _____, and finding no just
2 reason for delay in entry of this Order Approving Settlement (“Order of Approval”);

3 NOW, THEREFORE, pursuant to Section 382 of the California Code of Civil Procedure
4 and Rules 1545 and 1859 of the California Rules of Court, it is hereby ORDERED that:

5 1. The terms defined in the Settlement Agreement are incorporated in this Order.

6 2. This Court has jurisdiction over the subject matter of this proceeding and all parties
7 in this proceeding, including all members of the California Class (as defined in the Settlement
8 Agreement).

9 3. This Court approves the Settlement set forth in the Settlement Agreement and finds
10 that the Settlement is, in all respects, fair, reasonable, and adequate to the California Class under
11 Section 382 of the California Code of Civil Procedure and Rules 1545 and 1859 of the California
12 Rules of Court.

13 4. This Court finds and concludes that the notice given to the members of the
14 California Class complied with this Court’s Order dated _____, and that the notice (including,
15 but not limited to, the forms of notice and methods of identifying and giving notice to the class) was
16 the best notice practicable under the circumstances and fully satisfies the requirements of due
17 process, the California Code of Civil Procedure, the California Rules of Court, and any other
18 applicable law or rules of the Court.

19 5. This Court dismisses, with prejudice, All Cases pending before the Court (as listed
20 on Exhibit A to this Order), including *Microsoft Cases*, J.C.C.P. No. 4106, and all cases presently
21 coordinated in that action.

22 6. By this Order, Microsoft is expressly and irrevocably, fully and finally, released and
23 forever discharged from All Claims by members of the California Class as provided in the release
24 contained in sections III.A and III.B of the Settlement Agreement. The release is attached to this
25 Order as Exhibit B.

26 7. Each and every member of the California Class, as well as those acting in concert
27 with them, are permanently barred and enjoined from instituting, maintaining, prosecuting or
28 enforcing, either directly or indirectly, all claims, demands, actions, suits and causes of action

APPENDIX D

1 against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether
2 known or unknown, asserted or unasserted, that are released under paragraph 6 above.

3 8. All persons or entities who have properly excluded themselves from the plaintiff
4 classes previously certified by the Court are excluded from the California Class, and such persons
5 and entities are not bound by the release contained in the Settlement Agreement and in paragraphs 6
6 and 7 above.

7 9. Without affecting the finality of this judgment, the Court reserves and retains
8 continuing and exclusive jurisdiction over all matters relating to the administration, consummation,
9 and enforcement of the terms of the Settlement Agreement and the Settlement embodied in the
10 Settlement Agreement, including all proceedings both before and after the Final Judgment becomes
11 final and is no longer subject to appeal. If the Settlement Agreement is reversed or overturned on
12 appeal, then this Order of Approval and the Settlement Agreement shall have no force or effect, and
13 all negotiations, proceedings and statements made in connection with the Settlement Agreement
14 shall be without prejudice to the right of any persons or entities, and the parties to the proceeding
15 shall be restored to their respective positions existing as of the date of execution of the Settlement
16 Agreement. The California Class and Microsoft shall remain subject to the Court's jurisdiction for
17 purposes of enforcing the provisions of this paragraph.

18 10. Upon consideration of the application of Lead Counsel for the California Class,
19 acting on behalf of and with full authority from counsel for all plaintiffs in this litigation pursuant to
20 Pretrial Order No. 1: Case Management, for an award of attorneys' fees, costs and expenses for all
21 counsel in this litigation, and all papers in favor of and in opposition to the application for fees,
22 Lead Counsel for the California Class on behalf of counsel for all plaintiffs in this litigation, are
23 awarded fees, costs and expenses of litigation in the amount of \$ _____, to be
24 paid by Microsoft to Lead Counsel for the California Class within 30 days after the Date of Final
25 Approval (as defined in the Settlement Agreement). Pursuant to Pretrial Order No. 1: Case
26 Management, Lead Counsel is responsible for distributing the payment among plaintiffs' counsel as
27 described in its application for an award of attorneys' fees, costs and expenses. After making the
28 payments as required by this paragraph, Microsoft and Lead Counsel for the California Class shall

APPENDIX D

1 have no further obligation to pay attorneys' fees, costs or expenses of this litigation to counsel for
2 any plaintiffs. Any of the following parties may request that the Court make formal findings in
3 connection with this award of attorneys' fees and costs: (1) any member of the California Class
4 that has properly objected in this Court to the application(s) for attorneys' fees and costs submitted
5 by Lead Counsel for the California Class or by other counsel for plaintiffs in these coordinated
6 proceedings; (2) Lead Counsel for the California Class or other plaintiffs' counsel that have
7 submitted separate application(s) for attorneys' fees and/or costs; and (3) Microsoft.

8
9 IT IS SO ORDERED.

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11 DATED: _____, 2003

12 The Honorable Paul H. Alvarado
13 Judge of the Superior Court
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APPENDIX E

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

COORDINATION PROCEEDING SPECIAL
TITLE [RULE 1550(b)]

J.C.C.P. No.: 4106

FINAL JUDGMENT

The Honorable Paul H. Alvarado

MICROSOFT CASES

This Final Judgment is entered upon motion for approval of a settlement presented in this proceeding (“Settlement”) as stated in the Settlement Agreement dated June ____, 2003 (“Settlement Agreement”), and the Appendices attached to the Settlement Agreement, by Lead Counsel for the California Class (as defined below), acting on behalf of and with full authority from counsel for all plaintiffs in the litigation pursuant to Pretrial Order No. 1: Case Management, after a hearing on notice.

1. For purposes of this Final Judgment, the following terms shall have the meaning set forth below:

“All Cases” means the cases listed on Exhibit A to this Final Judgment, and includes *Microsoft Cases*, J.C.C.P. No. 4106, Superior Court of California, County of San Francisco, and all of the cases presently coordinated in that action.

“All Claims” means all claims, demands, actions, suits and causes of action against

APPENDIX E

1 Microsoft (as defined below) and/or its directors, officers, employees, attorneys, insurers or agents,
2 whether known or unknown, asserted or unasserted, that any member of the California Class (as
3 defined below) ever had, could have had, now has or hereafter can, shall or may have, relating in
4 any way to any conduct, act or omission which was or could have been alleged in any of the cases
5 listed on Exhibit A to this Final Judgment and which arise from or relate to the purchase, use and/or
6 acquisition of a license for a Microsoft Operating System and/or Microsoft Application (as defined
7 below) and where the claims, demands, actions, suits or causes of action concern or relate to any of
8 the following: (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§1
9 *et seq.*, and the Cartwright Act, California Business and Professions Code §§ 16720 *et seq.*),
10 (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade
11 practices, (g) California's Unfair Competition Law, California Business and Professions Code
12 §§ 17200 *et seq.*, (h) California's Unfair Practices Act, California Business and Professions Code
13 §§ 17000 *et seq.* and/or (i) other federal or state law, regulation or common law similar or
14 analogous to any of the above. "All Claims" does not include (a) claims relating to the acquisition
15 or licensing of Microsoft Operating System or Microsoft Application software for use outside of
16 California, (b) claims arising from purchases directly from Microsoft Corporation of licenses for
17 Microsoft Operating System or Microsoft Application software or (c) claims by competitors of
18 Microsoft in their capacity as competitors. "All Claims" does not include claims relating to
19 Microsoft's conduct, acts or omissions that take place after December 15, 2001. However, "All
20 Claims" includes any and all claims described above relating to Microsoft's conduct, acts or
21 omissions that occurred on or prior to December 15, 2001.

22 "California Class" means all persons or entities who, between February 18, 1995, and
23 December 15, 2001, indirectly acquired a license for Microsoft Operating System and/or Microsoft
24 Applications software for use in California and who did not acquire it for the purpose of resale.

25 Excluded from the California Class are:

26 (1) government entities, Microsoft officers and directors, subsidiaries in which
27 Microsoft has greater than a 50 percent ownership interest and any judges or justices assigned to
28 hear any aspect of this litigation; and

APPENDIX E

1 (2) all persons or entities who have properly excluded themselves from the
2 plaintiff classes previously certified by the Court.

3 “Lead Counsel for the California Class” means Townsend and Townsend and Crew LLP.

4 “Microsoft” means Microsoft Corporation, its successors, assigns and subsidiaries.

5 “Microsoft Application” means the versions of the products listed on Exhibits B-2, B-3 and
6 B-4 to this Final Judgment.

7 “Microsoft Operating System” means the versions of the products listed on Exhibit B-1 to
8 this Final Judgment.

9 2. All Cases are dismissed with prejudice.

10 3. By this Final Judgment, Microsoft is expressly and irrevocably, fully and finally,
11 released and forever discharged from All Claims by members of the California Class as provided in
12 the release contained in sections III.A and III.B of the Settlement Agreement. The release is
13 attached to this Final Judgment as Exhibit C.

14 4. All counsel of record in All Cases, and all members of the California Class, as well
15 as those acting in concert with them, are permanently barred and enjoined from instituting,
16 maintaining, prosecuting or enforcing, either directly or indirectly, all claims, demands, actions,
17 suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys,
18 insurers or agents, whether known or unknown, asserted or unasserted, that are released under
19 paragraph 3 above.

20 5. Each party to the Settlement shall bear its own costs and the fees and expenses of its
21 counsel, except as directed in this Court’s Order Approving Settlement, dated _____, 2003.

22 Lead Counsel for the California Class on behalf of counsel for all plaintiffs in this litigation, are
23 awarded fees, costs and expenses of litigation in the amount of \$ _____.

24 Pursuant to Pretrial Order No. 1: Case Management, Lead Counsel is responsible for distributing
25 the payment among plaintiffs’ counsel as described in its application for an award of attorneys’
26 fees, costs and expenses. After making the payments as required by this paragraph, Microsoft and
27 Lead Counsel for the California Class shall have no further obligation to pay attorneys’ fees, costs
28 or expenses of this litigation to counsel for any plaintiffs. Any of the following parties may request

APPENDIX E

1 that the Court make formal findings in connection with this award of attorneys' fees and costs: (1)
2 any member of the California Class that has properly objected in this Court to the application(s) for
3 attorneys' fees and costs submitted by Lead Counsel for the California Class or by other counsel for
4 plaintiffs in these coordinated proceedings; (2) Lead Counsel for the California Class or other
5 plaintiffs' counsel that have submitted separate application(s) for attorneys' fees and/or costs; and
6 (3) Microsoft.

7 6. The terms of the Settlement Agreement are not merged into this Final Judgment and
8 remain binding upon the parties to the Settlement Agreement, who are directed to implement its
9 provisions.

10 7. The Court retains jurisdiction over the parties to enforce the terms of this Final
11 Judgment and the terms of the Settlement Agreement, including all proceedings both before and
12 after this Final Judgment is no longer subject to appeal. However, there being no just reason for
13 delay, this Final Judgment is final and appealable.

14 IT IS SO ORDERED.

15
16 DATED: _____, 2003

17 _____
18 The Honorable Paul H. Alvarado
19 Judge of the Superior Court
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