

THE HONORABLE DOUGLASS A. NORTH

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

JAMES ODOM and KATHERINE  
MOUREAUX-MALONEY, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION, a  
Washington corporation; BEST BUY CO.,  
INC., a Minnesota corporation; BEST BUY  
STORES, L.P.; and DOES 1-100,

Defendants.

NO. 04-2-10618-4 SEA

**SETTLEMENT AGREEMENT**

1 This Settlement Agreement (“Agreement”) is entered into as of June \_\_, 2010, between  
2 and among (1) Plaintiffs James Odom and Katherine Moureaux-Maloney (“Plaintiffs”), on  
3 behalf of themselves and the Class defined below; (2) Defendant Microsoft Corporation  
4 (“Microsoft”); and (3) Defendants Best Buy Co., Inc., and Best Buy Stores, L.P. (collectively,  
5 “Best Buy”), by and through their respective counsel. In this Agreement, Microsoft and Best  
6 Buy are referred to collectively as “Defendants,” and Plaintiffs and Defendants are referred to  
7 collectively as “Parties.”

### 8 RECITALS

9 A. On May 6, 2003, Samuel Kim filed a putative class action in the California  
10 Superior Court for Los Angeles County entitled *Kim v. Microsoft Corp. and Best Buy Co., Inc.*,  
11 No. BC295230, asserting claims based on the promotion and sale of free-trial subscriptions to  
12 Microsoft’s MSN Internet access service by Best Buy at its retail stores, on behalf of  
13 subscribers in California (“California Action”).

14 B. On May 15, 2003, Plaintiff James Odom filed a putative class action in the  
15 United States District Court for the Northern District of California, entitled *Odom v. Microsoft*  
16 *Corp. and Best Buy Co., Inc.*, Case No. C-03-2288-MMC, asserting claims based on the  
17 promotion and sale of free-trial subscriptions to Microsoft’s MSN Internet access service by  
18 Best Buy at its retail stores, on behalf of subscribers in the United States.

19 C. By order dated October 1, 2003, the *Odom* action was transferred to the United  
20 States District Court for the Western District of Washington (“Federal Court”), where it was  
21 assigned case number C03-2976P (“Federal Action”).

22 D. On November 19, 2003, a first amended complaint was filed in the Federal  
23 Action, naming James Odom and Katherine Moureaux-Maloney as plaintiffs and asserting  
24 claims against Microsoft and Best Buy Co., Inc. under the Racketeer Influenced and Corrupt  
25 Organizations Act (“RICO”), the Electronic Fund Transfer Act (“EFTA”), the Washington  
26 Consumer Protection Act, and for unjust enrichment.

1 E. By order dated March 16, 2004, the Federal Court dismissed Plaintiffs' RICO  
2 claims with prejudice.

3 F. The Parties subsequently entered into a stipulation under which Plaintiffs would  
4 voluntarily dismiss their EFTA and state-law claims without prejudice and pursue those claims  
5 in Washington state court.

6 G. By order dated April 22, 2004, pursuant to Plaintiffs' agreed motion, the Federal  
7 Court deemed Plaintiffs' EFTA and state-law claims voluntarily dismissed without prejudice,  
8 and entered final judgment on Plaintiffs' RICO claims.

9 H. On May 10, 2004, Plaintiffs filed an action in the Washington Superior Court  
10 for King County ("State Court"), entitled *Odom v. Microsoft Corp., Best Buy Co., Inc. and Best*  
11 *Buy Stores, L.P.*, Case No. 04-2-10618-4 SEA ("State Action"). The original complaint in the  
12 State Action asserted claims against Defendants under the Washington Consumer Protection  
13 Act, the Washington unsolicited-goods statute, the EFTA, and for fraudulent concealment and  
14 unjust enrichment.

15 I. On June 1, 2004, Plaintiffs appealed from the Federal Court's dismissal of their  
16 RICO claims to the United States Court of Appeals for the Ninth Circuit.

17 J. By order dated September 24, 2004, the State Court denied Defendants' motions  
18 to dismiss Plaintiffs' fraudulent-concealment claim and granted their motions to dismiss the  
19 EFTA claim, with leave to amend.

20 K. On October 14, 2004, Plaintiffs filed a first amended complaint in the State  
21 Action asserting the same claims asserted in their original complaint in that case.

22 L. By order dated December 27, 2004, the State Court granted Defendants'  
23 motions to dismiss Plaintiffs' EFTA claim, with prejudice.

24 M. By order dated April 10, 2006, the State Court denied certification of Plaintiffs'  
25 deception claims but certified the Class for litigation of whether it was an unfair practice to sign  
26 people up for free-trial subscriptions in such a way that the burden was placed on them to call

1 up and cancel in order to avoid paying MSN subscription charges after the free trial ended.  
2 Notice of the pendency of the State Action and the class certification, including a description of  
3 the procedure and deadline for excluding oneself from the Class, was provided to the Class as  
4 ordered by the State Court.

5 N. On May 4, 2007, the United States Court of Appeals for the Ninth Circuit issued  
6 its opinion in the Federal Action, reversing the dismissal of Plaintiffs' RICO claims and  
7 remanding the case to the Federal Court for litigation of those claims.

8 O. On June 4, 2007, the United States Court of Appeals for the Ninth Circuit stayed  
9 its mandate in the Federal Action pending Defendants' filing of a petition for writ of certiorari  
10 to the United States Supreme Court.

11 P. On October 15, 2007, the United States Supreme Court denied Defendants'  
12 petition for a writ of certiorari in the Federal Action.

13 Q. On November 26, 2007, the United States Court of Appeals for the Ninth Circuit  
14 issued its mandate to the Federal Court.

15 R. On January 28, 2008, pursuant to the Parties' stipulation, the Federal Court  
16 stayed the Federal Action.

17 S. On November 11, 2009, and December 3, 2009, the Parties engaged in  
18 settlement discussions in San Francisco, California at the offices of JAMS, mediated by the  
19 Honorable Edward A. Infante, retired United States Magistrate Judge. The Parties were unable  
20 to reach agreement on a proposed class action settlement.

21 T. On January 21, 2010, the Washington Supreme Court handed down *Schnall v.*  
22 *AT&T Wireless Services*, No. 80572-5, 2010 Wash. LEXIS 61 (Jan. 21, 2010).

23 U. On February 11, 2010, the Parties engaged in further settlement discussions in  
24 San Francisco, California at the offices of JAMS, mediated by Judge Infante. The Parties were  
25 unable to reach agreement on a proposed class action settlement. Following additional  
26

1 negotiations, the Parties reached an agreement in principle on a proposed class action  
2 settlement, and have reduced that agreement to writing as set forth in this Agreement.

3 V. Defendants deny all of Plaintiffs' allegations of wrongdoing, damages, and other  
4 injuries alleged in the State Action, the Federal Action, the California Action, and the  
5 Dismissed Action, and deny liability under any claim alleged. Defendants nevertheless have  
6 concluded that they will enter into this Agreement to, among other things, avoid the further  
7 expense, inconvenience, burden, uncertainty, and risk of continued litigation.

8 NOW, THEREFORE, the Parties hereby agree that, subject to judicial approval, the  
9 State Action will be dismissed and the Released Claims will be released on the terms and  
10 conditions set forth below.

11 **I. DEFINITIONS**

12 1. As used in this Agreement, the following terms have the corresponding  
13 meanings set forth below.

14 (a) "California Action" means the action *Kim v. Microsoft Corp. and Best Buy Co.,*  
15 *Inc.*, No. BC295230, pending in the California Superior Court for Los Angeles County.

16 (b) "Claim Deadline" means a date, no earlier than ninety (90) days after the  
17 Settlement Notice is initially mailed to the Class in accordance with the Notice Order, by which  
18 a Class Member must submit a claim to be eligible for a payment under this Agreement.

19 (c) "Claim Form" means a form, substantially in the form attached hereto as Exhibit  
20 A-2, that a Class Member may complete and mail to the Claims Administrator to submit a  
21 claim for a payment under this Agreement.

22 (d) "Claims Administrator" means Tilghman & Co., P.C. of Birmingham, Alabama.

23 (e) "Class" means the plaintiff class certified in the State Action on April 10, 2006,  
24 defined as:

25 All people in the United States who (1) at any time from December  
26 1, 1999 to the present, paid Microsoft for charges in connection  
with a free-trial MSN Internet access service account that was

1 established in their name at a Best Buy store but did not receive a  
full refund, and (2) did not log on to the account.

2 Excluded from the proposed class are Defendants, any entity in  
3 which any Defendant has a controlling interest, Defendants'  
4 officers, directors, and employees, Defendants' legal  
5 representatives, heirs, successors, and assigns, any judge to whom  
the case is assigned and his or her immediate family and any  
person who timely and validly excludes himself or herself from the  
class.

6 (f) "Class Counsel" means the law firms Girard Gibbs LLP and Terrell Marshall &  
7 Daudt PLLC.

8 (g) "Class Member" means a person who falls within the definition of the Class and  
9 (1) did not request exclusion from the Class in accordance with the procedure and deadline set  
10 forth in the notice previously provided to the Class in connection with the State Court's April  
11 10, 2006 class certification order ("Previous Notice"); (2) does not request exclusion from the  
12 Class in accordance with the Notice Order defined herein; and (3) has not received a full refund  
13 of MSN Charges as of the date the Claims Administrator finally pays or denies a claim.

14 (h) "Defendants' Claims" has the meaning given in paragraph 9.

15 (i) "Defense Counsel" means Defendants' counsel of record in the State Action,  
16 i.e., Orrick Herrington & Sutcliffe LLP and Montgomery, McCracken, Walker & Rhoads, LLP  
17 as to Microsoft, and Perkins Coie LLP as to Best Buy.

18 (j) "Dismissed Action" means the action *Washington v. Microsoft Corp. and Best*  
19 *Buy, Inc.*, No. 03-2-25175-5 SEA, which was filed in the Washington Superior Court for King  
20 County and voluntarily dismissed without prejudice, effective May 6, 2004.

21 (k) "Effective Date" has the meaning given in paragraph 24.

22 (l) "Fairness Hearing" means a hearing held by the State Court to determine  
23 whether the settlement should be granted final approval and the Judgment entered; whether  
24 Class Counsel's Fee Application should be granted and, if so, the amount of the Fee Award;  
25 and whether Class Counsel's request for incentive awards to Plaintiffs should be granted.  
26

1 (m) "Federal Action" means the action *Odom v. Microsoft Corp. and Best Buy Co.,*  
2 *Inc.*, which was filed in the United States District Court for the Northern District of California  
3 on May 15, 2003, was transferred to the United States District Court for the Western District of  
4 Washington on October 1, 2003 and assigned case number C03-2976P.

5 (n) "Fee Application" has the meaning given in paragraph 14.

6 (o) "Fee Award" has the meaning given in paragraph 14.

7 (p) "Judgment" means a final order and judgment of the State Court, substantially in  
8 the form attached hereto as Exhibit B, granting final approval of the settlement set forth in this  
9 Agreement, dismissing the complaint in the State Action with prejudice, and deeming the  
10 Parties' claims released as set forth in this Agreement.

11 (q) "MSN Charges" means monthly Internet access charges that a Class Member  
12 paid Microsoft in connection with a Subject Account.

13 (r) "MSN Litigation" means the State Action, Federal Action, California Action,  
14 and Dismissed Action collectively.

15 (s) "Notice Order" means an order of the State Court, substantially in the form  
16 attached hereto as Exhibit A, granting preliminary approval of the settlement set forth in this  
17 Agreement, ordering that notice of the settlement be given to the Class, setting the Fairness  
18 Hearing, and providing an opportunity for people falling within the Class definition to exclude  
19 themselves from the Class even if they did not do so pursuant to the Previous Notice.

20 (t) "Released Claims" has the meaning given in paragraph 8.

21 (u) "Released Persons" means Defendants, any entity in which any Defendant has a  
22 controlling or an ownership interest, Defendants' current and former officers, directors, and  
23 employees, and Defendants' agents, legal counsel, insurers, representatives, heirs, predecessors,  
24 successors, and assigns.

25 (v) "Settlement Notice" means a notice directed to the Class, substantially in the  
26 form attached hereto as Exhibit A-1, describing the material terms of the settlement, the

1 procedures and deadlines for commenting on or objecting to or requesting exclusion from the  
2 settlement, and the date and time of the Fairness Hearing.

3 (w) "Settlement Web Site" has the meaning given in paragraph 20.

4 (x) "State Action" means the action *Odom v. Microsoft Corp., Best Buy Co., Inc.*  
5 *and Best Buy Stores, LP*, which was filed in the Washington Superior Court for King County  
6 on May 10, 2004.

7 (y) "Subject Account" means a free-trial MSN dial-up Internet access service  
8 account that was established in a Class Member's name at or through a Best Buy store in the  
9 United States at any time from December 1, 1999, to June 30, 2004, and as to which account  
10 the person did not log on, according to Microsoft's records.

11 (z) "Termination Notice" has the meaning given in paragraph 25.

12 **II. SETTLEMENT CONSIDERATION**

13 **A. Payments To Class Members**

14 2. As consideration to the Class for dismissal of the State Action and release of the  
15 Released Claims, Microsoft will make payments to Class Members who submit timely and  
16 valid claims in accordance with the following provisions.

17 (a) To be eligible for a payment, a Class Member must mail a completed and signed  
18 Claim Form by U.S. mail postmarked no later than the Claim Deadline. It must be received by  
19 the Claims Administrator within 14 (fourteen) days of the Claim Deadline. A Class Member  
20 who mails a timely and valid Claim Form, accurately supplies all information required by the  
21 Claim Form or requested by the Claims Administrator as provided in this Agreement, and signs  
22 the Claim Form is referred to in this Agreement as a "Valid Claimant."

23 (b) Using the information provided by Microsoft pursuant to paragraph 6, the  
24 Claims Administrator will review and evaluate each claim for validity, accuracy, timeliness and  
25 completeness, and determine the amount payable on the claim. If, in the determination of the  
26 Claims Administrator, a claim is timely but incomplete, the Claims Administrator will give the

1 Class Member notice in writing of the deficiencies and that the Class Member has thirty (30)  
2 days to cure the deficiencies, measured from the date the Claims Administrator's written notice  
3 is mailed to the submitting Class Member. If, within that thirty-day period, the Class Member  
4 cures the deficiencies identified by the Claims Administrator, and the Claims Administrator  
5 thereafter determines that the Class Member's claim is valid and complete, the Class Member  
6 will be deemed a "Valid Claimant."

7 (c) Each Valid Claimant will receive as a settlement benefit a payment in the total  
8 amount of MSN Charges that he or she paid and were not previously refunded to him or her, up  
9 to a maximum of seventy-five dollars (\$75).

10 (d) No later than sixty (60) days after the Claim Deadline, the Claims Administrator  
11 will report to Class Counsel and Defense Counsel the total number of Valid Claimants and the  
12 total dollar amount of their claims.

13 (e) No later than fourteen (14) days after Defense Counsel's receipt of the report  
14 from the Claims Administrator pursuant to the foregoing subparagraph, or seven (7) days after  
15 the Effective Date, whichever is later, the Claims Administrator will mail a check to each Valid  
16 Claimant in the amount payable to that person under paragraph 2(c) of this Agreement with  
17 funds provided by Microsoft.

18 (f) If a Class Member is deceased, the Class Member's executor, administrator, or  
19 legally determined heir may submit a Claim Form. If a Class Member has a legal guardian, or  
20 due to age or disability, has executed a power of attorney authorizing another to manage his or  
21 her financial affairs, the guardian or attorney may submit a Claim Form. The Claims  
22 Administrator may require reasonable proof of the claimant's authority. Claims are not  
23 transferrable in any other circumstances. No Class Member or any other person or entity may  
24 submit more than one Claim Form unless that person or entity established more than one  
25 Subject Account.  
26

1 (g) If the Claims Administrator rejects any Claim Form as untimely, invalid,  
2 fraudulent, or containing inaccurate or insufficient information, the Claims Administrator will  
3 promptly mail the Class Member notice of the rejection and that the Class Member may  
4 challenge the rejection by mailing written notice informing the Claims Administrator of the  
5 basis for the challenge. To be considered by the Claims Administrator, any such challenge  
6 must be mailed to the Claims Administrator by U.S. mail postmarked within twenty-one (21)  
7 calendar days of the date of the Claim Administrator's mailing of the notice rejecting the Class  
8 Member's Claim Form, shall set forth the basis of the Class Member's challenge, and be  
9 accompanied by all documents the Class Member wishes the Claims Administrator to consider.  
10 The Claims Administrator will attempt in good faith to resolve the dispute with the Class  
11 Member within thirty (30) calendar days of receipt of the challenge. The Claims Administrator  
12 will notify the Class Member that, if a dispute remains, the Class Member has fourteen (14)  
13 calendar days to contact Class Counsel to appeal the Claims Administrator's rejection of the  
14 claim. If Class Counsel believes that the rejection of the claim was appropriate, Class Counsel  
15 will so notify the Class Member and Microsoft's Counsel within fourteen (14) calendar days of  
16 being contacted by the Class Member, and the appeal will be rejected and finally concluded. If  
17 Class Counsel disputes the rejection, Class Counsel will so notify Microsoft's Counsel within  
18 fourteen (14) calendar days of receipt of the appeal, and Class Counsel and Microsoft will  
19 attempt to resolve any and all disputes in good faith. If Class Counsel and Microsoft are unable  
20 to resolve the dispute, the decision of the Claims Administrator regarding the validity of the  
21 claim shall be final. If the claim is accepted as a result of the appeal process, the Class Member  
22 will be mailed the payment to which the Class Member is entitled within seven (7) calendar  
23 days of notification that the claim was accepted. Class Members should not contact Defendants  
24 directly by e-mail, facsimile, U.S. mail, telephone, or otherwise with regard to disputed claims,  
25 and Defendants have no obligation to respond to any such inquiry.  
26

1 (h) The parties recognize that some Class Members may not cash or deposit their  
2 payment checks. A payment check not cashed or deposited within one hundred eighty (180)  
3 days of the date drawn will become void. Each check will bear a notice so stating. Those  
4 Class Members will no longer be Valid Claimants. The Claims Administrator will return any  
5 funds on hand attributable to those checks to Microsoft.

6 (i) Class Counsel and Microsoft may modify the procedures set forth in this  
7 paragraph 2 for submitting Claim Forms and making payments as necessary or appropriate by  
8 mutual written agreement without Court approval. Such modifications shall not, however,  
9 (1) impose any responsibility on Best Buy for the payment of claims, Microsoft being solely  
10 responsible for payment of properly presented claims to Valid Claimants; (2) impose any duties  
11 or obligations on Best Buy with respect to the submission or processing of claims under this  
12 paragraph, or; (3) impose any duties or obligations on Best Buy with respect to claims  
13 administration under Paragraph II.C. of this Agreement.

14 (j) Unless otherwise ordered by the State Court, any Class Member who fails to  
15 submit a claim in compliance with this paragraph will be forever barred from receiving any  
16 payment pursuant to this Agreement and settlement, but will in all other respects be bound by  
17 all of the terms of this Agreement and settlement, including the terms of the Judgment to be  
18 entered in the State Action and the release of Released Claims provided for in this Agreement,  
19 and will be forever barred from bringing any claim, action, suit or proceeding of any kind  
20 against the Released Persons concerning the Released Claims.

21 (k) No person will have any claim against any of the Plaintiffs, Class Members,  
22 Defendants, other Released Persons, the Claims Administrator, or any of their respective  
23 attorneys, including Class Counsel, based on the processing, rejection, or payment of claims  
24 performed substantially in accordance with this Agreement or further orders of the State Court.

1  
2 **B. Non-Monetary Benefits To Class Members**

3 3. No later than thirty (30) days after the Effective Date:

4 (a) Microsoft will suspend Internet access service on all active Subject Accounts.  
5 Unless the Class Member requests that it remains open within sixty (60) days after that  
6 suspension, Microsoft will close the Subject Account.

7 (b) Microsoft will forever discontinue billing of Class Members for Subject  
8 Accounts as of the date Internet access service is suspended under this paragraph 3, but may  
9 resume billing a Class Member if the Class Member requests that the suspended account  
10 remain open.

11 (c) Microsoft will permanently forgive and will make no further attempt to collect  
12 charges that were assessed on Subject Accounts on or before the date Internet access service is  
13 suspended under this paragraph 3 but were not paid because the credit or debit card issuer did  
14 not finally settle the transaction when a charge was presented, or charged back a previously  
15 settled charge.

16 (d) Microsoft will confirm that to its knowledge, no adverse credit references were  
17 communicated to any credit bureau as a result of the failure of any Class Member to pay  
18 charges assessed on a Subject Account.

19 4. No later than thirty (30) days after the date of this Agreement, Microsoft will  
20 provide Class Counsel with a description of program changes or remedial efforts it undertook  
21 after the filing of the MSN Litigation relating to Subject Accounts such as changes in refund  
22 policies, disclosures, or communication initiatives directed to Class Members. Defendants do  
23 not concede that any such changes or remedial efforts relating to the Subject Accounts or the  
24 marketing of the MSN Internet access service were undertaken as a result of the MSN  
25 Litigation.  
26

1           **C.     Claims Administrator; Notice And Administrative Costs**

2           5.       Acting as an independent contractor, the Claims Administrator will arrange for  
3 the printing and mailing of the Settlement Notice to Class Members and will administer the  
4 settlement, including but not limited to receiving and processing claims, assisting Class  
5 Members with the claims process, and issuing and mailing payments to Class Members who  
6 submit timely and valid Claim Forms.

7           6.       No later than seven (7) days after the date of the Notice Order, Microsoft will  
8 provide the Claims Administrator with the last known names and addresses of all Class  
9 Members reasonably ascertainable from Microsoft's database relating to Subject Accounts and  
10 the dollar amount of the balance of MSN Charges paid by each Class Member after deducting  
11 refunds. Microsoft will also provide such other information that the Claims Administrator  
12 deems reasonably necessary to print and mail the Settlement Notice to Class Members and  
13 process and review claims as set forth above. Microsoft will provide the foregoing information  
14 in such electronic and/or other format that the Claims Administrator may reasonably request.

15          7.       The Claims Administrator will perform the duties and render the services  
16 contemplated by this Agreement pursuant to a contract between the Claims Administrator and  
17 Microsoft. Microsoft will be financially responsible for all fees, costs, and expenses arising  
18 under that contract of any kind or nature, including provision of notice to Class Members and  
19 claims administration. Neither Best Buy, nor its counsel, nor Plaintiffs, nor Class Counsel, nor  
20 any Class Member will be considered a party to that contract or financially responsible or liable  
21 for any fees, costs, or expenses arising under that contract, nor in any other way or through any  
22 other means bear any financial responsibility for any notice, administrative costs, or claims  
23 administration in connection with this Agreement. None of these fees, costs, or expenses will  
24 be deducted from payments made by Microsoft to Valid Claimants. Nothing in this paragraph  
25 shall entitle Plaintiffs or Class Counsel to seek any fee, cost, or expense in excess of the  
26 attorneys' fees, costs, expenses, and incentive awards provided for in paragraphs 14 and 15.

1 **III. RELEASES; DISPOSITION OF RELATED ACTIONS**

2 8. As of the Effective Date, Plaintiffs and all Class Members fully, finally, and  
3 forever release, relinquish, and discharge the Released Persons from any and all liabilities,  
4 claims, rights, suits, damages, attorneys' fees, and causes of action, of any kind whatsoever,  
5 whether known or unknown, that ever existed, now exist, or may exist in the future, and that  
6 were or could have been asserted in the MSN Litigation, or that Plaintiffs and the Class  
7 Members have or may have arising from or relating to the program for registering individuals  
8 for free-trial MSN Internet access service at or through Best Buy stores, or providing or billing  
9 for that Internet access service, including allegations in the MSN Litigation that persons were  
10 registered for free-trial MSN dial-up Internet access service accounts at or through Best Buy  
11 stores without their authorization ("Released Claims"). Released Claims do not include any  
12 liabilities, claims, rights, suits, or causes of action that a Plaintiff, Class Member, or Class  
13 Counsel may assert or bring to enforce the terms of this Agreement.

14 9. As of the Effective Date, Defendants and all other Released Persons fully,  
15 finally, and forever release, relinquish, and discharge Plaintiffs, all Class Members, all other  
16 Released Persons, and their attorneys, including Class Counsel, from any and all liabilities,  
17 claims, rights, suits, damages, attorneys' fees, and causes of action, of any kind whatsoever,  
18 whether known or unknown, that ever existed, now exist, or may exist in the future, arising  
19 from or relating to the initiation, prosecution, assertion, litigation, settlement, or resolution of  
20 the MSN Litigation, any of the actions constituting the MSN Litigation, any of the claims  
21 asserted therein, or any liabilities, claims, rights, suits, damages, attorneys' fees, and causes of  
22 action, of any kind whatsoever, whether known or unknown, that ever existed, now exist, or  
23 may exist in the future by a Released Person against another Released Person, including for  
24 contribution or indemnity, arising out of or relating to the program for registering individuals  
25 for MSN Internet access service at or through Best Buy stores, or providing or billing for that  
26 Internet access service, or the claims alleged in the MSN Litigation, or the initiation,

1 prosecution, assertion, litigation, settlement, or resolution of the claims alleged in the MSN  
2 Litigation (“Defendants’ Claims”). Defendants’ Claims do not include any liabilities, claims,  
3 rights, suits, or causes of action that a Defendant or other Released Person may assert or bring  
4 to enforce the terms of this Agreement. Notwithstanding the foregoing, nothing in this  
5 Agreement, including the release of Defendants' Claims, constitutes nor shall be construed as a  
6 release of any liabilities, claims, rights, suits or causes of action that Best Buy may have, assert,  
7 or bring against Robins, Kaplan, Miller & Ciresi, L.L.P. ("RKMC") arising out of or relating to  
8 RKMC's representation of Best Buy in the MSN Litigation.

9       10. Except as expressly limited in paragraphs 8 and 9 above, these Releases are  
10 intended to release any and all matters known, unknown, suspected or unsuspected, or hereafter  
11 discovered or ascertained arising from or relating to the matters described in paragraphs 8 and 9  
12 above. To the extent that any law, legal principle, or statute may cause these Releases not to  
13 extend to unknown, unsuspected or unascertained claims, the Parties hereby expressly,  
14 knowingly, and intentionally waive the benefits of such applicable law, legal principle, or  
15 statute, including any and all common law principles that would tend to preserve such claims.  
16 The Parties expressly, knowingly, and intentionally waive the provisions of Section 1542 of the  
17 California Civil Code and any other statute or common law to the same effect with respect to  
18 the subject matter of these Releases. Section 1542 provides:

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

23       11. The Parties expressly waive, extinguish, and relinquish any and all rights and  
24 benefits which they, and each of them, may have, or which may be conferred upon them by  
25 California Civil Code Section 1542 or any similar law of any state or country in any  
26 jurisdiction to the fullest extent that they may do so.

1           12.     The California Action, which remains stayed as of the date of this Agreement,  
2 raises allegations similar to those asserted in the State Action and Federal Action with respect  
3 to the allegedly unauthorized enrollment of consumers in free-trial MSN Internet access service  
4 accounts in or through Best Buy stores, and asserts claims under California state law on behalf  
5 of a putative class of California residents. The named plaintiff in the California Action is  
6 represented by Class Counsel Girard Gibbs LLP.

7           13.     In entering into this Agreement, the Parties intend to resolve all MSN Litigation.  
8 To that end, and in exchange for the settlement consideration set forth herein, which is made  
9 available to all Class Members, including the plaintiff and the members of the putative class in  
10 the California Action and the members of the putative class in the Federal Action, dismissal of  
11 the California Action and the Federal Action will be requested as follows:

12           (a)     Within fourteen (14) days after execution of this Agreement, Plaintiffs and  
13 Defendants will file a joint report with the Federal Court in the Federal Action stating that the  
14 Parties have reached a proposed settlement in the State Action that would, if granted final  
15 approval, release all claims asserted in the Federal Action, and advising the Federal Court of  
16 Plaintiffs' intention to request dismissal of the Federal Action with prejudice after the Effective  
17 Date.

18           (b)     Within fourteen (14) days after execution of this Agreement, Girard Gibbs LLP,  
19 on behalf of plaintiff in the California Action, and Defendants will file a joint report with the  
20 court presiding over the California Action stating that the Parties have reached a proposed  
21 settlement in the State Action that would, if granted final approval, release all claims asserted  
22 in the California Action, and advising the court of plaintiff's intention to request dismissal of  
23 the California Action with prejudice after the Effective Date.

24           (c)     Within fourteen (14) days after the Effective Date, Plaintiffs will file a request  
25 for dismissal of the Federal Action with prejudice.

1 (d) Within fourteen (14) days after the Effective Date, Girard Gibbs LLP, on behalf  
2 of plaintiff in the California Action, will file a request for dismissal of the California Action  
3 with prejudice.

4 **IV. ATTORNEYS' FEES AND EXPENSES; PLAINTIFFS' INCENTIVE AWARDS**

5 14. Subject to the State Court's approval, Defendants will not object to an award of  
6 attorneys' fees and costs to Class Counsel in the amount up to but no more than \$2,625,000.  
7 Plaintiffs agree to request no more than \$2,625,000 for attorneys' fees, costs, expenses, or any  
8 other fee or reimbursement except the incentive awards provided for in paragraph 15 from the  
9 State Court or any other court in connection with the MSN Litigation. If approved by the State  
10 Court, Best Buy will pay up to but no more than \$2,125,000 of that amount, and Microsoft will  
11 pay up to but no more than \$500,000 of that amount (the "Fee Award"). If the State Court  
12 awards less than \$2,625,000 for attorneys' fees, costs, and expenses, Best Buy's and  
13 Microsoft's payments will be reduced proportionately. These payments of attorneys' fees and  
14 costs are separate from and do not reduce or affect any amounts payable by Microsoft to Class  
15 Members or any other benefits provided by Defendants under this Agreement. Class Counsel  
16 will submit an application to the State Court for approval of the Fee Award ("Fee Application")  
17 consistent with the foregoing in terms of amount and allocation, to be heard at the Fairness  
18 Hearing. Defendants will not oppose the Fee Application unless Plaintiffs or Class Counsel fail  
19 to comply with the provisions of this paragraph.

20 15. The Fee Application will also request an incentive award for Plaintiffs James  
21 Odom and Katherine Moureaux-Maloney not to exceed \$2,500 per Plaintiff, to be to be paid by  
22 Microsoft separately and without reducing or affecting any amounts payable by Microsoft to  
23 Class Members or any other benefits provided by Defendants under this Agreement.  
24 Defendants will not oppose this request for incentive awards unless Plaintiffs or Class Counsel  
25 fail to comply with the provisions of this paragraph.  
26

1           16. Any Fee Award and incentive awards approved by the State Court will be paid  
2 to Class Counsel within fourteen (14) days after the Fee Award and the incentive awards have  
3 become final judgments, all appeals have been exhausted, and the final judgments are no longer  
4 subject to review upon appeal or review.

5           17. Any order or proceedings relating to the Fee Application, or any appeal from  
6 any order relating thereto or reversal or modification thereof, will not operate to terminate or  
7 cancel this Agreement, or affect or delay the finality of the Judgment approving this Agreement  
8 and the settlement set forth herein, except that an increase in Defendants' liability for attorneys'  
9 fees, costs, or expenses or incentive awards over the agreed amount will give Defendants the  
10 right to terminate this Agreement as provided in paragraph 25.

11 **V. SETTLEMENT APPROVAL PROCESS; SETTLEMENT WEB SITE**

12           18. No later than thirty (30) days after execution of this Agreement, the Parties will  
13 apply to the State Court for entry of the Notice Order.

14           19. The Claims Administrator will arrange for the printing and mailing of the  
15 Settlement Notice in accordance with the Notice Order.

16           20. The Claims Administrator will establish and maintain a Web site exclusively  
17 dedicated to providing information about the settlement set forth in this Agreement.  
18 (“Settlement Web Site”). At the Settlement Web Site, copies of this Agreement, the Settlement  
19 Notice, the Claim Form, and the previous notice mailed to the Class under the State Court's  
20 April 10, 2006 class certification order will be available for viewing and downloading in Adobe  
21 Portable Document (.pdf) Format and Microsoft XML Paper Specification (.xps) format. The  
22 Claims Administrator will design the text and format of the Settlement Web Site, subject to  
23 Class Counsel's and Defense Counsel's consent, such consent not to be unreasonably withheld.  
24 The first day the Settlement Web Site is online and publicly accessible must be no earlier and  
25 no later than the first day the Settlement Notice is mailed to Class Members. Thereafter, the  
26 Settlement Web Site will remain online and publicly accessible until the earlier of sixty (60)

1 days after the mailing of checks under paragraph 2(e) is complete, or until this Agreement is  
2 terminated by its terms. The Settlement Web Site may be updated from time to time to reflect  
3 relevant developments.

4 21. No later than ten (10) days before the Fairness Hearing, the Claims  
5 Administrator will provide the Parties with an affidavit or declaration by a competent person  
6 attesting that the Settlement Notice has been mailed and the Settlement Web Site has been  
7 established and maintained in accordance with the Notice Order.

8 22. The Parties will file papers in support of final settlement approval and in  
9 response to any comments or objections from Class Members, in accordance with the Notice  
10 Order and/or such other order of the State Court.

11 23. At the Fairness Hearing, Plaintiffs will move for final approval of the settlement  
12 set forth in this Agreement and entry of the Judgment. Defendants will support that motion.

13 **VI. EFFECTIVE DATE; TERMINATION**

14 24. "Effective Date" means the first business day after all of the following events  
15 and conditions have occurred and been met:

16 (a) All Parties through their duly authorized representatives have executed this  
17 Agreement;

18 (b) The State Court has entered the Notice Order substantially in the form attached  
19 hereto as Exhibit A;

20 (c) The State Court has entered the Judgment substantially in the form attached  
21 hereto as Exhibit B, and the time for any appeal from or review of such Judgment has expired  
22 without any such appeal or review having been filed or sought, or, if any appeal is filed and not  
23 dismissed, such Judgment has been upheld on appeal in all material respects and is no longer  
24 subject to review upon appeal or review by writ of certiorari, or, if the State Court enters an  
25 order and final judgment in a form other than that provided above ("Alternative Judgment")  
26

1 and none of the Parties elects to terminate the settlement, such Alternative Judgment has  
2 become final and no longer subject to appeal or review; and

3 (d) No Party having a right to terminate the settlement has given a timely  
4 Termination Notice.

5 25. Each Party has the right to terminate this Agreement and the settlement set forth  
6 herein by providing written notice (“Termination Notice”) to all other Parties within thirty (30)  
7 days after (a) the State Court’s declining to enter the Notice Order in any material respect; (b)  
8 the State Court’s declining to approve this Agreement or any material part of it; (c) the State  
9 Court’s declining to enter the Judgment in any material respect; (d) the date on which the  
10 Judgment is modified or reversed in any material respect by the Washington Court of Appeals,  
11 the Washington Supreme Court, or the United States Supreme Court; or (e) the date on which  
12 an Alternative Judgment is modified or reversed in any material respect by the Washington  
13 Court of Appeals, the Washington Supreme Court, or the United States Supreme Court. No  
14 order of the State Court, or modification or reversal on appeal of any order of the State Court  
15 concerning any Fee Award to Class Counsel or incentive awards to Plaintiffs, will constitute  
16 grounds for cancellation or termination of this Agreement, except that if any court or courts  
17 award attorneys’ fees, costs, or expenses of more than \$2,125,000 to be paid by Best Buy or  
18 \$500,000 to be paid by Microsoft, or Plaintiffs’ incentive awards greater than \$5,000 in the  
19 aggregate, then Best Buy and/or Microsoft, as the case may be, shall have the right to terminate  
20 this Agreement under this paragraph.

21 26. Except as otherwise provided herein, if the settlement is terminated under  
22 paragraph 25, then (a) the Parties and all Class Members will be deemed to have reverted to  
23 their respective positions in the MSN Litigation as of the date immediately before execution  
24 of this Agreement; (b) except as otherwise expressly stated, the Parties will proceed in all  
25 respects as if this Agreement had not been executed and any related orders had not been  
26 entered; and (c) Microsoft will remain financially responsible for all fees, costs, and expenses

1 of the Claims Administrator incurred as of the date Defendants give the Claims Administrator  
2 notice of the Termination Notice. In such event, neither Best Buy, nor Plaintiffs, nor any Class  
3 Member, nor any of their attorneys, including Class Counsel, will have any financial  
4 responsibility for any notice or administrative costs in connection with this Agreement or the  
5 settlement set forth herein, including any fees, costs, or expenses of the Claims Administrator.

6 **VII. NO ADMISSION OF WRONGDOING**

7 27. Neither this Agreement, whether or not consummated or terminated under  
8 paragraphs 24-26, nor any proceedings taken under this Agreement, nor any communications,  
9 negotiations, correspondence, or documents in connection with this Agreement:

10 (a) may be offered or received against Defendants or other Released Persons as  
11 evidence of, or be construed as or deemed to be evidence of, a presumption, concession, or  
12 admission by any Defendant or other Released Person with respect to the truth of any fact  
13 alleged by Plaintiffs or the validity of any claim that has been or could have been asserted in  
14 the MSN Litigation or other proceeding, or the deficiency of any defense that has been or could  
15 have been asserted in the MSN Litigation or other proceeding, or of any liability, negligence,  
16 fault, deception, unfairness, or wrongdoing of Defendants or other Released Persons;

17 (b) may be construed as an admission or concession that the consideration to be  
18 given hereunder represents the amount which could be or would have been recovered after trial;  
19 or

20 (c) may be construed as or received in evidence as an admission, concession, or  
21 presumption against Plaintiffs or any Class Members that any of their claims are without merit,  
22 or that any defenses asserted by Defendants have any merit, or that damages recoverable in the  
23 MSN Litigation would not have exceeded the consideration to be given hereunder.

24 **VIII. MISCELLANEOUS PROVISIONS**

25 28. All of the exhibits attached hereto are hereby incorporated by reference as  
26 though fully set forth herein.

1           29.     The Parties agree that the amount paid and the other terms of the settlement  
2 were negotiated at arm's length in good faith by the Parties, and reflect a settlement that was  
3 reached voluntarily after consultation with experienced legal counsel.

4           30.     This Agreement may not be modified or amended, nor may any of its provisions  
5 be waived, except by a writing signed on behalf of all Parties or their successors-in-interest.

6           31.     The headings herein are used for the purpose of convenience only and are not  
7 meant to have legal effect.

8           32.     The administration and consummation of the settlement set forth in this  
9 Agreement will be under the authority of the State Court, and the State Court will retain  
10 jurisdiction for, among other things, entering orders concerning any Fee Award to Class  
11 Counsel and enforcing the terms of this Agreement.

12          33.     The waiver by one Party of any breach of this Agreement by any other Party  
13 will not be deemed a waiver of any other prior or subsequent breach of this Agreement.

14          34.     This Agreement and its exhibits constitute the entire agreement among the  
15 Parties concerning the settlement of the MSN Litigation, and no representations, warranties, or  
16 inducements have been made by any Party concerning this Agreement and its exhibits other  
17 than those contained and memorialized in such documents. This Agreement supersedes all  
18 previous understandings, communications, and agreements with respect to the subject of this  
19 Agreement.

20          35.     This Agreement may be executed in one or more counterparts. All executed  
21 counterparts and each of them will be deemed to be one and the same instrument, provided that  
22 the Parties' respective counsel exchange among themselves all signed counterparts.

23          36.     This Agreement will be binding on, and inure to the benefit of, the successors  
24 and assigns of the Parties.

1           37.     The construction, interpretation, operation, effect, and validity of this  
2 Agreement, and all documents necessary to effectuate it, will be governed by the internal laws  
3 of the State of Washington without giving effect to its choice-of-law rules.

4           38.     This Agreement may not be construed more strictly against one Party than  
5 another merely because the Agreement, or any part of it, may have been prepared by counsel  
6 for one of the Parties, as the Parties recognize that the Agreement is the result of arm's-length  
7 negotiations between the Parties, and all Parties have contributed substantially and materially to  
8 the preparation of this Agreement.

9           39.     Class Counsel and Defense Counsel agree to cooperate fully with one another in  
10 seeking entry of the Notice Order, the State Court's approval of this Agreement and the  
11 settlement set forth herein, and entry of the Judgment, and to promptly make a good faith effort  
12 to agree on and execute all such other documentation as may be reasonably required to obtain  
13 the State Court's preliminary and final approval of the settlement and dismissal of the Federal  
14 Action and the California Action.

15           40.     All counsel and any other person executing this Agreement, any of the exhibits  
16 hereto, or any related documents warrant and represent that they have the full authority to do so  
17 and that they have the authority to take appropriate action required or permitted to be taken  
18 under the Agreement to effectuate its terms.

1 IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be  
2 executed by their duly authorized attorneys below.

3  
4 Dated:

5 \_\_\_\_\_  
6 Daniel C. Girard  
7 Amanda M. Steiner  
8 Anthony K. Lee  
9 Christina Connolly Sharp  
10 GIRARD GIBBS LLP  
11 601 California Street, Suite 1400  
12 San Francisco, California 94108  
13 Telephone: (415) 981-4800  
14 Facsimile: (415) 981-4846

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***Class Counsel***

117 Dated:

118 \_\_\_\_\_  
119 Charles B. Casper  
120 Patrick T. Ryan  
121 MONTGOMERY, McCRACKEN, WALKER &  
122 RHOADS, LLP  
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*Attorneys for Defendant Microsoft Corporation*

Dated:

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Harry H. Schneider, Jr.  
Joseph M. McMillan  
Charles C. Sipos  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4800  
Seattle, Washington 98101-3099  
Telephone: (206) 359-8000  
Facsimile: (206) 359-9000

*Attorneys for Defendant Best Buy Stores, L.P. (sued as  
Best Buy Co., Inc.)*

# EXHIBIT A-1

**SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If you paid money to Microsoft for an MSN account established in your name at a Best Buy store, never logged on to the account, and never received a full refund, you may be entitled to a payment from a class action settlement.**

*The Court authorized this notice. It is not a solicitation from a lawyer.*

**Your legal rights are affected whether or not you act. Please read this notice carefully.**

<b>Your Legal Rights and Options in this Proposed Settlement</b>	
<b>SUBMIT A CLAIM</b>	If the settlement is approved by the Court, you will receive a payment if you submit a valid claim form <b>postmarked by September 27, 2010</b> . See question 7 below.
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that allows you to bring your own lawsuit concerning the issues being settled in this case. See question 11 below.
<b>COMMENT ON THE SETTLEMENT</b>	Write to the Court to support or oppose the proposed settlement. See questions 12 and 13 below.
<b>ATTEND A HEARING</b>	Ask to speak in Court about the fairness of the proposed settlement. See questions 13 and 14 below.
<b>DO NOTHING</b>	Receive no payment, but if the settlement is approved, you will give up rights to sue. See question 15 below.

- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved.

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

## 1. Why did I receive this notice?

You received this notice because Microsoft's records show that an MSN Internet access account with an initial free-trial period was established in your name at a Best Buy store between December 1, 1999 and June 30, 2004, that you never logged on to or used the account, and that you paid subscription fees to Microsoft for that account but did not receive a full refund. The Court ordered that this notice be sent to you because you have a right to know about a proposed class action settlement that may affect you. This notice explains the lawsuit, the settlement, who is covered by the settlement, your rights and options, the benefits available under the settlement, and how to obtain them.

## 2. What is this lawsuit about?

Plaintiffs in this class action allege that Best Buy and Microsoft engaged in unfair business practices in connection with the promotion of MSN Internet access service subscriptions at Best Buy stores. From 1999 to 2004, Microsoft and Best Buy promoted Microsoft's MSN Internet service at Best Buy stores by offering MSN subscriptions with free-trial periods. Unless a registered subscriber cancelled the MSN service during the trial period, Microsoft would begin charging the subscriber's credit or debit card at the end of the trial period, even if the subscriber had never logged on to or used the MSN service. Plaintiffs allege that requiring consumers to cancel a service they never used to avoid being charged was unfair and violated Washington State law. Microsoft and Best Buy deny they did anything wrong and say it was fair to ask subscribers to cancel their trial subscriptions to avoid being charged after the free-trial period ended. The Court has not decided who is right or wrong.

## 3. Why is there a settlement?

This vigorously contested litigation has been pending for seven years. Microsoft and Best Buy deny all allegations of wrongdoing or liability. The Court has required Plaintiffs to concede, as a condition of allowing the case to proceed as a class action, that consumers were informed that they were signing up for MSN and that they had to call to cancel in order to avoid charges after the free-trial period ended.

Plaintiffs and their attorneys have concluded that the settlement is in the best interests of the class because it provides a recovery now while avoiding the risk, expense, uncertainty, and delay of pursuing the case through trial and any appeals. Microsoft and Best Buy decided to settle to avoid the further expense, inconvenience, burden, uncertainty, and risk of continued litigation.

## 4. Who is included in the settlement?

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

The settlement includes **all people in the United States who (1) at any time from December 1, 1999 to the present, paid Microsoft for charges in connection with a free-trial MSN Internet access service account that was established in their name at a Best Buy store between December 1, 1999 and June 30, 2004, but did not receive a full refund, and (2) did not log on to the account.**

Excluded from the proposed class are Defendants Microsoft and Best Buy, any entity in which any Defendant has a controlling interest, Defendants' officers, directors, and employees, Defendants' legal representatives, heirs, successors, and assigns, and any judge to whom the case is assigned and his or her immediate family.

In addition, the class will exclude everyone who timely files a valid request for exclusion from the class. The procedure for exclusion is described below under question 11.

**5. I already received a notice about this lawsuit in June 2006. Why?**

In June 2006, you were sent a notice informing you that the Court authorized, or "certified," the case to proceed to trial as a class action lawsuit. The Court did not decide whether Microsoft and Best Buy did anything wrong. You were given the opportunity to exclude yourself from the lawsuit at that time, but no written exclusion request was received from you and therefore you remain a member of the class at this time. You can view the previous notice at [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com).

**6. What does the settlement provide?**

**If the Settlement is Approved:**

- **You will receive a payment**, as described below under question 7.
- **If you are currently paying for an MSN free-trial subscription established at a Best Buy store between December 1, 1999 and June 30, 2004, Microsoft will cancel it and stop billing you, unless you ask for it to stay open.**
- **Microsoft or Best Buy will pay agreed litigation costs**, including costs of giving notice to the class, administering the settlement, Court-approved incentive awards to the two Plaintiffs, and a Court-approved award of attorneys' fees and expenses to Plaintiffs' attorneys up to the amounts identified in question 9 below.

**7. How do I obtain a payment under the settlement?**

If the settlement is approved by the Court and you mail the Claims Administrator a timely and valid claim form, you are entitled to receive a refund of MSN charges that you paid on your

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

account that were not previously refunded, up to a maximum of \$75. Most charges were \$21.95 per month. To request a payment, you must complete, sign, and mail the accompanying claim form. Please provide all requested information, sign and date the form, and mail it to the Claims Administrator at the address provided on the form, **postmarked no later than September 27, 2010.**

You do not need to specify the amount of your claim. Microsoft's records show the charges to each class member that have not been refunded. If the settlement is approved by the Court, each class member who submits a timely and valid claim will be sent a check for the appropriate amount. **You must deposit or cash the check within 6 months after the date on the check.** If you do not, the check will be void and you will no longer be entitled to any payment from the settlement fund, but you will still be bound by the terms of the settlement, including the release of your claims.

If the Claims Administrator determines that your claim form is deficient, you will be notified in writing and given an opportunity to correct the deficiency.

#### 8. What other benefits are provided by the settlement?

- If the settlement is approved and your MSN free-trial account created at a Best Buy store between December 1, 1999 and June 30, 2004 is still open, Microsoft will suspend service and billing on your account. If you have any unpaid charges, Microsoft will forgive them. Sixty days later, Microsoft will close your account unless you ask for it to stay open. If you do, Microsoft will reinstate your service and resume billing you as of the date your account is reinstated. You will not be charged for the time service was suspended.

#### 9. Who are the attorneys representing the class and how will they be paid?

The Court has appointed the following attorneys and law firms to represent the class as legal counsel:

Daniel C. Girard  
GIRARD GIBBS LLP  
601 California Street, Suite 1400  
San Francisco, California 94108  
Telephone: (415) 981-4800  
Facsimile: (415) 981-4846  
[www.girardgibbs.com](http://www.girardgibbs.com)

Beth E. Terrell  
TERRELL MARSHALL & DAUDT  
PLLC  
3600 Fremont Avenue N.  
Seattle, Washington 98103  
Telephone: (206) 816-6603  
Facsimile: (206) 350-3528  
[www.tmdlegal.com](http://www.tmdlegal.com)

When they ask the Court to approve the settlement, Class Counsel will also apply to the Court for an award of attorneys' fees and reimbursement of expenses in the total amount of \$2,625,000. Since the start of the lawsuit in May 2003, Class Counsel pursued the case on behalf of class members purely on a contingent basis. Class Counsel has received no compensation for their services or reimbursement of their expenses, except for recovery of

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

certain fees and expenses incurred in connection with discovery disputes during the litigation. The \$2,625,000 that Class Counsel is applying for here compensates Class Counsel for fees and expenses not already reimbursed as part of the resolution of those discovery disputes.

Class Counsel will also ask the Court to approve incentive awards for the two Plaintiffs in the amount of \$2,500 each, for their initiative and effort in pursuing this case on behalf of the class, which included testifying at deposition and consulting with attorneys over six years.

Any awards for attorneys' fees, reimbursement of expenses, or incentive awards approved by the Court will be paid by Microsoft or Best Buy separately from, and without reducing, the settlement payments to class members, up to the amount of \$2,625,000 for attorneys' fees and expenses, and \$2,500 each for incentive awards for the two Plaintiffs.

#### 10. What am I giving up to obtain a payment or stay in the class?

You must stay in the class to obtain a settlement payment. By staying in the class, you will give up any right you may have to pursue, continue to pursue, or be part of any other lawsuit against Microsoft, Best Buy or their affiliates concerning the free-trial MSN Internet access service offered through Best Buy stores, or providing or billing for that Internet access service. The legal claims you will release are described more fully in Paragraph 8 of the Settlement Agreement, which is available for viewing at [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com). You will also be bound by the Court's orders in this case, including the final judgment, which will dismiss all claims asserted on behalf of the class and order the parties to implement the settlement.

If you wish to keep your right to sue or continue a lawsuit concerning the free-trial MSN Internet access service offered through Best Buy stores, you must exclude yourself from the class.

#### 11. How can I exclude myself from the class and settlement?

If you wish to exclude yourself from the class and settlement, you must submit a written exclusion request. If you exclude yourself, you cannot obtain a payment under the settlement; you will not be bound by the final judgment; and you will retain the right to pursue your own lawsuit concerning the free-trial MSN Internet access service offered through Best Buy stores, or providing or billing for that Internet access service.

To request exclusion, you must write a letter or postcard that lists your name, address, and telephone number, and states that you wish to be excluded from the class and settlement in *Odom v. Microsoft and Best Buy*, case number 04-2-10618-4 SEA. You must sign the letter or postcard and send it to the Claims Administrator at **P.O. Box 13005, Birmingham, AL 35202-3005, postmarked by August 9, 2010** or if delivered by a delivery service other than U.S. Mail so that it is **received no later than August 9, 2010**.

QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE

## 12. How can I tell the Court what I think about the settlement?

Unless you exclude yourself as described above under question 11, you can comment in support of or in opposition to the settlement, Class Counsel's application for attorneys' fees and expenses, or the request for incentive awards for the two Plaintiffs. Your objections or comments must be submitted in writing. You must send the original of your objections or comments to the Clerk of the Court and send copies to Class Counsel, Microsoft's counsel, and Best Buy's counsel at the following addresses, so that your objections or comments are **received no later than August 9, 2010**:

Clerk of the Court  
Superior Court of Washington for King County  
King County Courthouse  
516 Third Avenue, Room E-609  
Seattle, Washington 98104

Class Counsel:

Daniel C. Girard  
Girard Gibbs LLP  
601 California Street  
Suite 1400  
San Francisco, CA 94108

Counsel for Microsoft:

Charles B. Casper  
Montgomery, McCracken,  
Walker & Rhoads, LLP  
123 South Broad Street  
Philadelphia, PA 19109-1099

Counsel for Best Buy:

Harry H. Schneider, Jr.  
Perkins Coie LLP  
1201 Third Avenue  
Suite 4800  
Seattle, WA 98101-3099

Your objections or comments (a) must include a reference at the beginning to *Odom v. Microsoft and Best Buy*, case number 04-2-10618-4 SEA; (b) must list your name, address, and telephone number; (c) must be signed by you; and (d) must state your position and the reasons for your position. You must include copies of any documents you wish the Court to consider. If you do not present your views in writing in compliance with the foregoing procedure and deadline, your views will not be considered, and you will waive any objections you have.

As described below, the Court will hold a hearing to decide whether to approve the settlement. If you submit written objections or comments and wish to appear and speak at the hearing, your objections or comments must include a statement that you intend to appear and speak at the fairness hearing, must set forth the position that you intend to present at the hearing, and include copies of any documents you wish the Court to consider.

If you want your own lawyer to appear and speak at the hearing on your behalf, you must also state in your written objections or comments that you intend to have your lawyer appear and speak for you, and list the name, address, and telephone number of your lawyer.

QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE

Exhibit A-1

**13. When and where will the Court hold a hearing on the fairness of the settlement?**

This lawsuit is pending before the Honorable Douglass A. North of the Superior Court of Washington for King County (Seattle). On **September 24, 2010, at 1 p.m.**, Judge North will hold a hearing on the fairness of the settlement and whether it should be approved. The hearing will be held in Courtroom W-764 of the Superior Court of Washington for King County, 516 Third Avenue, Seattle, Washington 98104. At the hearing, Judge North will also consider Class Counsel's application for attorneys' fees and expenses and the request for incentive awards for the two named Plaintiffs.

**14. Do I have to come to the hearing? May I speak at the hearing?**

You are not required to attend the hearing to have the Court consider your written comments or objections. You or your lawyer may attend the hearing if you wish, at your own expense.

If you wish to speak at the hearing, you must submit written comments or objections, including a statement that you intend to appear and speak at the hearing, in compliance with the procedures and deadline set forth under question 12 above.

**15. What happens if I do nothing at all?**

If you do nothing and the settlement is approved, you will receive no payment from the settlement. You will still be part of the class, however, and your legal claims will be released as described under question 10 above, and you will be prohibited from pursuing them. In other words, if you do nothing at all, your legal claims will be released and you will receive no payment.

**16. How do I get more information?**

This notice provides only a summary of information about the settlement. For more details, you may wish to review the Settlement Agreement and other documents available for viewing at [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com). You can also get more information by calling the Claims Administrator toll free at 1-800-754-9649. The Settlement Agreement and all other pleadings and papers filed in the lawsuit are available for inspection and copying during regular business hours at the office of the Clerk of the Court, Superior Court of Washington for King County, 516 Third Avenue, Room E-609, Seattle, Washington 98104.

If you would like more information, you may also contact Class Counsel by contacting them at the address and telephone number listed under question 9 above.

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

**PLEASE DO NOT CONTACT THE COURT, MICROSOFT, OR BEST BUY WITH QUESTIONS ABOUT THE SETTLEMENT.**

**QUESTIONS? VISIT [www.internetfreetrialsettlement.com](http://www.internetfreetrialsettlement.com) OR CALL 1-800-754-9649  
TOLL-FREE**

**Exhibit A-1**

**EXHIBIT A-2**

**SETTLEMENT CLAIM FORM**

*Odom v. Microsoft Corp., Best Buy Co., Inc., and Best Buy Stores, L.P., Case No. 04-2-10618-4 SEA  
(Superior Court of Washington for King County)*

**To make a claim in the above case, please complete and mail this form,  
postmarked no later than September 27, 2010, to:**

**Internet Free Trial Settlement  
P.O. Box 13005  
Birmingham, AL 35202-3005**

**[Printed class member name]  
[Printed class member address]  
[Class Member City, State Zip]**

**I. NAME/ADDRESS CORRECTION**

If your name or address as printed above is incorrect or outdated, please check the box to the left and fill out this Section I to correct or update your name and/or address.

If you are entitled to a settlement check, it will be made payable to the name and sent to the address printed above, unless you correct or update the information using the blanks below.

First name: \_\_\_\_\_ Middle initial: \_\_\_\_\_ Last name: \_\_\_\_\_

Street address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

**II. CLAIM AMOUNT**

This lawsuit concerns free-trial MSN dial-up Internet access accounts that (a) were established in class members' names at Best Buy stores between Dec. 1, 1999 and June 30, 2004; (b) had a free-trial period, after which Microsoft would assess monthly charges unless the class member called to cancel; and (c) were never logged on to by class members.

**Under the settlement, you are entitled to claim a payment in the amount of all MSN charges that you paid on your free-trial MSN dial-up Internet access account established at a Best Buy store between Dec. 1, 1999 and June 30, 2004 and that were not previously refunded to you, up to a maximum of \$75.**

**You do not need to specify the dollar amount of your claim.** Defendants' records show the amount of the charges that you paid and were not previously refunded. If you submit a timely and valid claim and the settlement is approved, you will be sent a check for the appropriate amount up to a maximum of \$75.

**III. AFFIRMATION**

**Please read the following statements and sign and date the form below.**

I paid monthly charges for an MSN dial-up Internet access account established at a Best Buy store after the free-trial period ended, never logged on to the account, and did not receive a full refund. I am making a claim for the settlement payment described in Section II above. I agree to participate in the settlement described in the Court-approved notice that accompanied this claim form. I agree to release any and all claims that I may have based on the MSN Internet access account referred to in Section II above, as described more fully in the notice. The foregoing statements and all information I have provided on this form are true and correct to the best of my knowledge and belief.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# EXHIBIT B

THE HONORABLE DOUGLASS A. NORTH

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

JAMES ODOM and KATHERINE  
MOUREAUX-MALONEY, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION, a  
Washington corporation; BEST BUY CO.,  
INC., a Minnesota corporation; BEST BUY  
STORES, L.P.; and DOES 1-100,

Defendants.

NO. 04-2-10618-4 SEA

**[PROPOSED]  
ORDER AND FINAL JUDGMENT**

ORDER AND FINAL JUDGMENT

**Exhibit B**

**GIRARD GIBBS LLP**  
601 CALIFORNIA STREET, SUITE 1400  
SAN FRANCISCO, CA 94108  
PHONE: (415) 981-4800  
FAX: (415) 981-4846

1 On September 24, 2010, at 1:00 p.m. the Court held a hearing to determine whether the  
2 proposed class action settlement in this case should be granted final approval and a judgment  
3 entered under the settlement. The Court has considered all arguments and written submissions  
4 made in connection with the matter, including any objections or comments by Class Members.  
5 The Court now finds and orders as follows:

6 1. All defined terms used herein have the same meanings set forth for such terms in  
7 the Settlement Agreement dated June 7, 2010 (the "Agreement").

8 2. The Court has jurisdiction over the subject matter of this action, Plaintiffs, all  
9 Class Members, and Defendants.

10 3. Notice of the proposed settlement and the Fairness Hearing was given to the  
11 Class in accordance with the Order Granting Preliminary Approval Of Proposed Settlement,  
12 Directing Notice To Class, And Setting Fairness Hearing, dated June \_\_\_\_, 2010 (the "Notice  
13 Order"), consisting of individual mailed notice to all Class Members who could be identified  
14 with reasonable effort from Microsoft's records. The form and method of giving notice to the  
15 Class met the requirements of CR 23 and due process, constituted the best notice practicable  
16 under the circumstances, and constituted due and sufficient notice to all persons entitled  
17 thereto.

18 4. Attached hereto as Exhibit A is a list of the names of the persons who have  
19 excluded themselves from the Class and are thus not bound by this Judgment.

20 5. The Settlement Agreement in this action warrants final approval under Rule 23  
21 of the Washington Civil Rules because it is fair, adequate, and reasonable to those it affects,  
22 and resulted from extensive good-faith arm's length negotiations between the parties, and is in  
23 the public interest considering the following factors:

- 24 a. The likelihood of success by Plaintiffs or Defendants;
- 25 b. The amount of discovery or evidence;
- 26 c. The Settlement terms and conditions;

- d. The recommendation and experience of counsel;
- e. Future expense and the likely duration of litigation;
- f. The recommendation of neutral parties including the mediator;
- g. The number of objectors and the nature of the objections; and
- h. The presence of good faith and the absence of collusion.

6 *See Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188-201, 35 P.3d 351 (2001).

7 6. Without further order of the Court, the Parties may agree to reasonable  
8 extensions of time to carry out any of the provisions of the Agreement.

9 7. All Class Members who failed to submit an objection to the settlement in  
10 accordance with the deadline and procedures set forth in the Notice Order are deemed to have  
11 waived and are forever foreclosed from raising an objection.

12 8. The Court hereby dismisses the complaint in this action with prejudice and  
13 without costs, except as provided in the Agreement, and renders judgment in favor of  
14 Defendants.

15 9. Plaintiffs and all Class Members are hereby deemed to have fully, finally, and  
16 forever released, relinquished, and discharged the Released Persons from all Released Claims,  
17 as more fully set forth in the Agreement, and are permanently barred and enjoined from  
18 pursuing any Released Claims against the Released Persons.

19 10. Defendants and all other Released Persons are hereby deemed to have fully,  
20 finally, and forever released, relinquished, and discharged Plaintiffs, all Class Members, all  
21 other Released Persons and their attorneys, including Class Counsel, from all Defendants'  
22 Claims, as more fully set forth in the Agreement, and are permanently barred and enjoined  
23 from pursuing any Defendants' Claims against any Plaintiffs, Class Members, other Released  
24 Persons, or their attorneys, including Class Counsel.

25 11. Class Counsel are hereby awarded \$2,625,000 in attorneys' fees and  
26 reimbursement of expenses, an amount that the Court finds fair and reasonable. This award

1 will be paid by Defendants in accordance with the allocation set forth in the Agreement  
2 (\$2,125,000 to be paid by Best Buy and \$500,000 to be paid by Microsoft) at the time specified  
3 in the Agreement, and is to be allocated by Class Counsel among themselves under their own  
4 agreement. In making this award of attorneys' fees and reimbursement of expenses, the Court  
5 has considered and found that:

6 (a) Class Counsel devoted substantial amounts of time and effort to pursuing  
7 this action, and the amount of attorneys' fees represented by the award is less than Class  
8 Counsels' lodestar;

9 (b) The settlement will result in payments in meaningful amounts to Class  
10 Members who submit timely and valid claims, and such Class Members will materially benefit  
11 from the settlement obtained by Class Counsel;

12 (c) Class Counsel took the case on a contingent basis, and assumed and bore  
13 substantial risk in pursuing the case during the approximately six years it has been pending  
14 before this Court;

15 (d) Class Counsel conducted the litigation and obtained the settlement  
16 through the exercise of skill, perseverance, and diligent advocacy;

17 (e) The action involves complex factual and legal issues and, in the absence  
18 of a settlement, would involve further lengthy proceedings and uncertain outcomes as to those  
19 issues;

20 (f) Had Class Counsel not obtained the settlement there would have  
21 remained a significant risk that the Class would ultimately recover less or nothing from  
22 Defendants;

23 (g) More than 320,000 copies of the Settlement Notice were mailed to Class  
24 Members indicating that Class Counsel would seek attorneys' fees and expenses in the amount  
25 now awarded by the Court, and only \_\_ objections were filed by Class Members concerning  
26 either the settlement or the requested fee-and-expense award;

1 (h) The amount of the fee award was agreed to by the Parties through arm's-  
2 length negotiations; and

3 (i) The amount of attorneys' fees awarded is consistent with awards in  
4 similar cases.

5 12. Incentive awards to Plaintiffs James Odom and Katherine Moureaux-Maloney  
6 are hereby approved in the amount of \$2,500 each, to be paid in accordance with the  
7 Agreement. The Court finds such incentive awards to be fair and reasonable in light of the time  
8 and effort devoted by Plaintiffs to the prosecution of this litigation on behalf of the Class.

9 13. Neither the Agreement nor the settlement, nor any discussion had, act  
10 performed, or document prepared or executed in connection with or in furtherance of the  
11 Agreement or settlement, (a) may be used as an admission, concession, or evidence of the  
12 validity of any Released Claims, or of any wrongdoing or liability of Defendants; (b) may be  
13 used as an admission, concession, or evidence of any fault, misrepresentation, or omission of  
14 Defendants in any civil, criminal, or administrative proceeding in any court, administrative  
15 agency, or other tribunal; or (c) may be used or admitted for any purpose other than  
16 enforcement of the terms of the Agreement or the settlement.

17 14. Neither Class Counsel's Fee Application, nor any order or proceedings relating  
18 to the application, nor any appeal from any order relating thereto or reversal or modification  
19 thereof, shall in any way affect or delay the finality of this Judgment, and all such matters shall  
20 be considered separately from this Judgment.

21 15. Without affecting or delaying the finality of this Judgment, the Court retains  
22 exclusive jurisdiction over the Parties and Class Members for all matters relating to this action  
23 and the settlement, including the administration, interpretation, implementation, or enforcement  
24 of the Agreement and this Judgment.

25 16. This Court finds that there is no just reason for delay and expressly directs  
26 Judgment and immediate entry by the Clerk of the Court.

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Entered this \_\_\_\_ day of \_\_\_\_\_, 2010.

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The Honorable Douglass A. North