

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BAROVIC v. BALLMER, ET AL.

Lead Case No: 2:14-cv-00540-JCC

This Document Relates To:

(Consolidated with Case No. 2:14-cv-00586-JCC)

ALL ACTIONS

STIPULATION AND AGREEMENT OF
SETTLEMENT

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LEAD CASE NO: 2:14-CV-00540-JCC

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1 antitrust concerns by agreeing to certain commitments to the EC (the “Commitments”), under
2 which Microsoft agreed to deliver a Brower Choice Screen (“BCS”) to personal computers
3 operating Windows in the European Economic Area (“EEA”) for a period of five years.
4 Under the terms of the Commitments, Microsoft became directly responsible for reporting to
5 the EC annually on the implementation of the Commitments over the next five years.

6 Microsoft failed to comply with the Commitments when in connection with its release
7 of Windows 7 Service Pack 1 (“SP1”) in February 2011, a technical error and
8 miscommunication resulted in a failure to install the BCS on approximately 15.3 million
9 computers in the EEA. In June 2012, the EC staff notified Microsoft that it had received
10 reports from a third-party that the BCS was not being displayed on certain new Windows
11 computers purchased in the EEA. Microsoft quickly remedied the failure. On March 6, 2013,
12 the EC announced that it had fined Microsoft €61 million, or approximately \$732.2 million,
13 for failing to comply with the Commitments.

14 **2. Procedural Background**

15 As a result of the above events, on March 21, 2013 and March 22, 2013, respectively,
16 DiPhilipo and Barovic issued separate demands on the Board to investigate and commence an
17 action against certain current and/or former directors and executive officers of the Company.
18 Plaintiffs’ demands were substantially identical and were reviewed by a Demand Review
19 Committee (the “DRC”) consisting of Individual Defendants Luczo and Dublon. Based on
20 the recommendation of the DRC, assisted by independent counsel, the Board of Directors
21 refused their respective demands by letters dated January 28, 2014.

22 Plaintiffs initiated the Action in this Court on behalf of Microsoft on April 11, 2014.
23 Plaintiffs alleged that the Demands were wrongfully refused and asserted claims under
24 Washington law on behalf of the Company against Defendants for breach of fiduciary duty,
25 unjust enrichment, abuse of control, and gross mismanagement. The Company and the
26 Individual Defendants subsequently moved to dismiss the Action, both under Fed. R. Civ. P.

23.1 (“Rule 23.1”) and under Fed. R. Civ. P. 12(b)(6). On December 10, 2014, the Court issued an order denying Microsoft’s and the Individual Defendants’ motions to dismiss Plaintiffs’ complaint.

On May 1, 2015 Microsoft filed a Motion for Summary Judgment (the “SJ Motion”). Plaintiffs have opposed the SJ Motion which remains pending before the Court.

II. PLAINTIFFS’ COUNSEL’S INVESTIGATION AND RESEARCH, PLAINTIFFS’ CLAIMS, AND THE BENEFITS OF SETTLEMENT

Plaintiffs’ Counsel conducted an extensive investigation relating to the claims and the underlying events alleged in the Action including, but not limited to: (i) inspecting, analyzing, and reviewing Microsoft’s public filings with the SEC, press releases, announcements, transcripts of investor conference calls, and news articles; (ii) drafting and filing the various complaints and other pleadings in the Action; (iii) researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) researching corporate governance issues; (v) reviewing discovery; (vi) preparing a detailed settlement demand; and (vii) participating in extensive settlement discussions with counsel for the Defendants.

Plaintiffs’ Counsel believes that the claims asserted in the Action have merit and that their investigation supports the claims asserted. Without conceding the merit of any of Defendants’ defenses or the lack of merit of any of their own allegations, and solely in order to avoid the potentially protracted time, expense, and uncertainty associated with continued litigation, including potential trial(s) and appeal(s), Plaintiffs have concluded that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Plaintiffs and Plaintiffs’ Counsel recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Action against the Individual Defendants through trial and through possible appeal. Plaintiffs and Plaintiffs’ Counsel also have taken into account the uncertain outcome and the risk of any

1 litigation, especially in complex cases such as the Action, as well as the difficulties and delays
2 inherent in such litigation. Based on their evaluation, Plaintiffs and Plaintiffs' Counsel have
3 determined that the Settlement is in the best interests of Plaintiffs, Microsoft, and Current
4 Microsoft Shareholders, and have agreed to settle the Action upon the terms and subject to the
5 conditions set forth herein.

6 **III. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

7 The Individual Defendants have denied and continue to deny that they have committed
8 or attempted to commit any violations of law, any breach of fiduciary duty owed to Microsoft,
9 or any wrongdoing whatsoever. Each Individual Defendant further asserts that at all material
10 times, he/she has acted in good faith and in a manner he/she reasonably believed to be in the
11 best interests of the Company and its shareholders. Without admitting the validity of any of
12 the claims Plaintiffs have asserted in the Action, or any liability with respect thereto,
13 Defendants have concluded that it is desirable that the claims be settled on the terms and
14 subject to the conditions set forth herein. Defendants are entering into this Settlement because
15 it will eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further
16 litigation. Further, Defendants acknowledge that the Settlement is fair, reasonable, adequate,
17 and in the best interests of Microsoft and Current Microsoft Shareholders.

18 Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment,
19 nor any document or exhibit referred or attached to this Stipulation, nor any action taken to
20 carry out this Stipulation, is or may be construed or used as evidence of the validity of any of
21 Plaintiffs' Released Claims, or as an admission by or against Defendants of any fault,
22 wrongdoing, or concession of liability whatsoever.

23 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

24 Plaintiffs (derivatively on behalf of Microsoft), the Individual Defendants, and
25 Nominal Defendant Microsoft, by and through their respective undersigned counsel or
26 attorneys of record, hereby stipulate and agree that, subject to the approval of the Court
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pursuant to Rule 23.1, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, as to all Parties, upon the terms and subject to the conditions set forth herein as follows:

1. Definitions

As used in this Stipulation, the following terms have the meaning specified below:

1.1 “Action” means, collectively, the above-captioned consolidated shareholder derivative actions pending in the U.S. District Court for the Western District of Washington, captioned *Barovic v. Ballmer*, Lead Case No: 2:14-cv-00540-JCC.

1.2 “Agreed Fee” means the negotiated fee and expense amount set forth in ¶ 5.1 below for which Plaintiffs’ Counsel will seek court approval and which Microsoft has agreed to pay to Plaintiffs’ Counsel in full, subject to Court approval.

1.3 “Board” means the Microsoft Board of Directors.

1.4 “Complaint” means the Verified Consolidated Shareholder Derivative Complaint (Dkt. No. 18).

1.5 “Court” means the United States District Court for the Western District of Washington.

1.6 “Current Microsoft Shareholder” means any Persons who owned Microsoft common stock as of the Execution Date of this Stipulation.

1.7 “Defendants” means, collectively, the Individual Defendants and Nominal Defendant Microsoft.

1.8 “Defendants’ Counsel” means Orrick, Herrington & Sutcliffe LLP, 701 5th Avenue, Suite 5600, Seattle, WA 98104-7079 on behalf of Microsoft; and Davis Wright Tremaine LLP, 1201 Third Avenue, Suite 2200, Seattle, WA 98101 on behalf of the Individual Defendants.

1.9 “Defendants’ Released Claims” means all claims and causes of action of every nature and description whatsoever, including both known claims and Unknown Claims, that

1 arise out of, are based on, or relate to the institution, prosecution, pendency, or settlement of
2 the claims asserted against Defendants in the Action (except for claims to enforce the
3 Settlement).

4 1.10 "Defendants' Released Persons" means each of the Defendants and their
5 respective present and former directors, officers, Immediate Family members, agents,
6 advisors, attorneys, personal and legal representatives, employees, affiliates, predecessors,
7 successors, parents, subsidiaries, divisions, heirs, beneficiaries, executors, estates,
8 administrators, trusts, trustees, insurers and assigns.

9 1.11 "Effective Date" means the first date by which all of the events and conditions
10 specified in ¶ 6.1 herein have been met and have occurred or have been waived.

11 1.12 "Execution Date" means the date this Stipulation has been signed by all the
12 Parties through their respective undersigned counsel.

13 1.13 "Fee Award" means any sum awarded by the Court to Plaintiffs' Counsel for
14 their attorneys' fees and expenses, as detailed in ¶¶ 5.1-5.2 below, in recognition of the
15 substantial benefits conferred upon Microsoft and Current Microsoft Shareholders by the
16 initiation, prosecution, pendency, and settlement of the Action, which Microsoft has agreed to
17 pay in full, subject to Court approval.

18 1.14 "Final," with respect to the Judgment or any other court order means: (i) if no
19 appeal is filed, the expiration date of the time provided for filing or noticing of any appeal
20 under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) calendar days after entry of
21 the Judgment or order; or (ii) if there is an appeal from the Judgment or order, (a) the date of
22 final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or
23 otherwise, or (b) the date the Judgment or order is finally affirmed on an appeal, the
24 expiration of the time to file a petition for a writ of certiorari or other form of review, or the
25 denial of a writ of certiorari or other form of review, and, if certiorari or other form of review
26 is granted, the date of final affirmance following review pursuant to that grant. However, any

1 appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued
2 with respect to attorneys' fees, costs or expenses shall not in any way delay or preclude the
3 Judgment from becoming Final.

4 1.15 "Final Order and Judgment" or "Judgment" means the order and judgment to
5 be rendered by the Court, substantially in the form attached hereto as Exhibit E.

6 1.16 "Immediate Family" means children, stepchildren, parents, stepparents,
7 spouses, marital communities, siblings, mothers-in-law, fathers-in-law, sons-in-law,
8 daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse"
9 shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil
10 union.

11 1.17 "Individual Defendants" means collectively Steven A. Ballmer, Dina D.
12 Dublon, William H. Gates III, Maria M. Klawe, Stephen J. Luczo, David F. Marquardt,
13 Charles H. Noski, Helmut Panke, John W. Thompson, Peter S. Klein, Brad Smith, and B.
14 Kevin Turner.

15 1.18 "Microsoft," the "Company" or "Nominal Defendant" means Microsoft
16 Corporation.

17 1.19 "Notice" means the Notice of Pendency and Proposed Settlement of
18 Shareholder Derivative Action, substantially in the form of Exhibit C attached hereto.

19 1.20 "Notice Costs" means any and all costs, fees and expenses incurred in
20 connection with providing notice of the pendency of the Action and proposed Settlement.

21 1.21 "Parties" means, collectively, each of the Plaintiffs (derivatively on behalf of
22 Microsoft), each of the Individual Defendants, and Nominal Defendant Microsoft.

23 1.22 "Person" or "Persons" means an individual, corporation, limited liability
24 corporation, professional corporation, partnership, limited partnership, limited liability
25 partnership, association, joint stock company, legal representative, trust, unincorporated
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1 association, government and any political subdivision and agency thereof, or any other
2 business or legal entity.

3 1.23 "Plaintiffs" means, collectively, Kim Barovic and Stephen DiPhilipo.

4 1.24 "Plaintiffs' Counsel" means: (i) The Weiser Law Firm, P.C., 22 Cassatt Ave,
5 Berwyn, PA 19312; (ii) Ryan & Maniskas, LLP, 995 Old Eagle School Road, Suite 311,
6 Wayne, PA 19087; (iii) Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the
7 Americas, 38th Fl., New York, NY, 10019; (iv) Badgley Mullins Turner, PLLC, 19929
8 Ballinger Way, Suite 200, Shoreline, WA 98155; and (v) Law Offices of Alfred G. Yates, Jr.,
9 P.C., 519 Allegheny Building, 429 Forbes Avenue, Pittsburgh, PA 15219.

10 1.25 "Plaintiffs' Released Claims" means all actions and causes of action of every
11 nature or description whatsoever, including both known claims and Unknown Claims, that
12 were or could have been asserted in the Complaint or in any other forum by Microsoft directly
13 or by Plaintiffs or any other Microsoft shareholder derivatively on behalf of Microsoft that
14 arise out of, are based upon, or relate to the allegations, facts, matters, events, circumstances,
15 disclosures, statements, acts, omissions or occurrences set forth in the Complaint or in any
16 other filing by Plaintiffs in this Action (except for claims to enforce the Settlement). For the
17 avoidance of doubt, the Plaintiffs' Released Claims do not include (i) any claims based on any
18 conduct of the Defendants' Released Persons after October 28, 2015; or (ii) any direct claims
19 belonging to Microsoft shareholders, including, without limitation, any claims arising under
20 the federal securities laws.

21 1.26 "Plaintiffs' Released Persons" means each of the Plaintiffs, Plaintiffs' Counsel,
22 and all other Current Microsoft Shareholders and each of their respective present and former
23 directors, officers, Immediate Family members, agents, advisors, attorneys, personal and legal
24 representatives, employees, affiliates, predecessors, successors, heirs, beneficiaries, executors,
25 estates, trusts, administrators, trustees, insurers, and assigns.

1 1.27 "Plaintiffs' Settlement Counsel" means: (i) The Weiser Law Firm, P.C., 22
2 Cassatt Ave, Berwyn, PA 19312; and (ii) Bernstein Litowitz Berger & Grossmann LLP, 1285
3 Avenue of the Americas, 38th Fl., New York, NY, 10019.

4 1.28 "Preliminary Approval Order" means the Order to be entered by the Court,
5 substantially in the form of Exhibit B attached hereto, *inter alia*, preliminarily approving the
6 terms and conditions of the Settlement as set forth in this Stipulation, directing that notice of
7 the pendency of the Action and the proposed Settlement be provided to Current Microsoft
8 Shareholders, and scheduling a Settlement Hearing to consider whether the Settlement and the
9 Agreed Fee should be approved by the Court.

10 1.29 "Released Persons" means, collectively, the Defendants' Released Persons and
11 the Plaintiffs' Released Persons.

12 1.30 "Releases" means the releases set forth in ¶¶ 4.2 and 4.3 of this Stipulation.

13 1.31 "Settlement" means the settlement between Plaintiff and Defendants on the
14 terms and conditions set forth in this Stipulation.

15 1.32 "Settlement Hearing" means a hearing by the Court to consider final approval
16 of the Settlement and determine, *inter alia*, (i) whether to enter the Final Order and Judgment;
17 and (ii) all other matters properly before the Court, including approval of the Agreed Fee.

18 1.33 "Stipulation" means this Stipulation and Agreement of Settlement.

19 1.34 "Summary Notice" means the Summary Notice of Pendency and Proposed
20 Settlement of Shareholder Derivative Action, substantially in the form of Exhibit D attached
21 hereto.

22 1.35 "Unknown Claims" means any of the Plaintiffs' Released Claims and
23 Defendants' Released Claims that any Party does not know or suspect to exist in his, her, or
24 its favor at the time of the release of each or any of the other Released Persons, which, if
25 known, by him, her, or it might have affected his, her, or its decision with respect to the
26 Settlement. The Parties expressly waive, relinquish, and release any and all provisions, rights,
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1 and benefits conferred by or under California Civil Code Section 1542 (“§ 1542”) or any other
2 law of the United States or any state or territory of the United States, or principle of common
3 law, which is similar, comparable, or equivalent to § 1542, which provides:

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

8 The Parties acknowledge that they may discover facts in addition to or different from those
9 now known or believed to be true by them, with respect to Plaintiffs’ Released Claims and
10 Defendants’ Released Claims, as the case may be, but it is the intention of the Parties to
11 completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish
12 any and all Plaintiffs’ Released Claims and Defendants’ Released Claims, known or
13 unknown, without regard to the subsequent discovery of additional or different facts.

14 **2. Terms of the Settlement**

15 2.1 Defendants acknowledge that as a direct result of the initiation, prosecution,
16 pendency, and settlement of the Action, Microsoft has agreed to make the Corporate
17 Governance Reforms attached hereto as Exhibit A, and that the Reforms will confer a
18 substantial benefit to Microsoft and Current Microsoft Shareholders. Microsoft shall initiate
19 the process of implementing the Corporate Governance Reforms within ten (10) calendar days
20 of the Effective Date of the Settlement, and the Corporate Governance Reforms shall be fully
21 implemented no later than ninety (90) calendar days after the Effective Date of the Settlement.

22 **3. Procedures for Approval of the Settlement**

23 3.1 Immediately after the Execution Date of this Stipulation, Plaintiffs shall submit
24 the Stipulation together with its exhibits to the Court and shall apply for entry of the
25 Preliminary Approval Order, substantially in the form of Exhibit B attached hereto, providing
26 for, *inter alia*: (i) preliminary approval of the Settlement set forth in this Stipulation; (ii)

1 approval of the method of providing notice of pendency of the Action and the proposed
2 Settlement to Current Microsoft Shareholders; (iii) approval of the form of Notice attached
3 hereto as Exhibit C and the Summary Notice attached hereto as Exhibit D; and (iv) the
4 scheduling of a date for the Settlement Hearing. Plaintiffs' application for entry of the
5 Preliminary Approval Order shall be unopposed by Defendants.

6 3.2 In accordance with the terms of the Preliminary Approval Order to be entered
7 by the Court, within seven (7) business days of the date of entry of the Preliminary Approval
8 Order, Microsoft shall: (i) cause the Notice to be filed with the SEC via a Current Report on
9 Form 8-K; (ii) cause the Summary Notice to be published one time in *Investors' Business*
10 *Daily*; and (iii) shall post the Notice and this Stipulation on Microsoft's corporate website.
11 The Parties believe the content and manner of such procedure constitutes adequate and
12 reasonable notice to Current Microsoft Shareholders under applicable law. Microsoft, on
13 behalf of the Individual Defendants, shall pay any and all Notice Costs, regardless of whether
14 the Court approves the Settlement or the Effective Date fails to occur, and in no event shall
15 Plaintiffs or Plaintiffs' Counsel be responsible for the payment of any Notice Costs.

16 3.3 The Parties shall jointly request that the Court hold the Settlement Hearing
17 within forty-five (45) calendar days after the date of filing of the Form 8-K referenced in ¶ 3.2
18 above. At the Settlement Hearing, Plaintiffs' Counsel shall request final approval of the
19 Settlement and the Court's approval of the Agreed Fee referenced in Section 5 below.

20 3.4 The Parties shall request that any objections and papers filed in support of
21 objections to the Settlement shall be considered by the Court at the hearing only if the
22 objector, among other things, (i) files notice of an intention to appear that includes proof of
23 current ownership of Microsoft common stock, (ii) files papers in support of the objection
24 with the Clerk of the Court by at least fourteen (14) calendar days prior to the hearing, and
25 (iii) ensures such notice and papers have been served on and received by counsel as identified
26 in the Notice by at least fourteen (14) calendar days prior to the hearing.

1 3.5 If the Court approves the Settlement at the Settlement Hearing, the Parties will
2 jointly request entry of the Judgment by the Court, substantially in the form of Exhibit E
3 attached hereto, providing for, *inter alia*, (i) final approval of the Settlement set forth in this
4 Stipulation as fair, adequate, and reasonable, and directing its consummation pursuant to its
5 terms; (ii) dismissal with prejudice of the Action; and (iii) the settlement and release of all
6 Plaintiffs' Released Claims as against the Defendants' Released Persons and all Defendants'
7 Released Claims as against the Plaintiffs' Released Persons in accordance with the terms and
8 conditions of this Stipulation.

9 **4. Releases**

10 4.1 The obligations incurred by the Parties pursuant to this Stipulation are in
11 consideration of: (i) the full and final disposition of the Action as against Defendants; and (ii)
12 the Releases provided for herein.

13 4.2 Upon the Effective Date of the Settlement, (i) Plaintiffs and all other Current
14 Microsoft Shareholders shall be deemed to have, and by operation of the law and of the
15 Judgment shall have, fully, finally and forever released, relinquished and discharged their
16 right to assert derivatively on behalf of the Company any and all of the Plaintiffs' Released
17 Claims against the Defendants' Released Persons, and shall forever be barred and enjoined
18 from instituting, commencing, or prosecuting derivatively on behalf of the Company any and
19 all of the Plaintiffs' Released Claims against the Defendants' Released Persons; (ii) Microsoft
20 shall be deemed to have, and by operation of the law and of the Judgment shall have, fully,
21 finally, and forever released, relinquished and discharged its right to assert directly any and all
22 of the Plaintiffs' Released Claims against the Defendants' Released Persons, and shall forever
23 be barred and enjoined from instituting, commencing, or prosecuting directly any and all of
24 the Plaintiffs' Released Claims against the Defendants' Released Persons. In addition,
25 Plaintiffs hereby agree, on behalf of themselves only, that they shall not initiate, prosecute,
26 assist in, or facilitate the prosecution of any direct claims belonging to Plaintiffs that could

1 have been asserted against the Defendants' Released Persons arising out of, based upon, or
2 relating to the allegations, facts, matters, events, circumstances, disclosures, statements, acts,
3 omissions or occurrences set forth in the Complaint or in any other filing by Plaintiffs in this
4 Action, including without limitation, any such claims arising out of the federal securities laws.

5 4.3 Upon the Effective Date of the Settlement, Defendants shall be deemed to
6 have, and by operation of the law and of the Judgment shall have, fully, finally and forever
7 released, relinquished and discharged any and all of the Defendants' Released Claims against
8 the Plaintiffs' Released Persons, and shall forever be barred and enjoined from instituting,
9 commencing, or prosecuting any and all of the Defendants' Released Claims against the
10 Plaintiffs' Released Persons.

11 4.4 Notwithstanding ¶¶ 4.2 and 4.3 above, nothing herein shall in any way impair
12 or restrict the rights of any Party to enforce the terms of the Stipulation.

13 **5. Plaintiffs' Counsel's Attorneys' Fees and Expenses**

14 5.1 After all material settlement terms were agreed upon, Plaintiffs' Counsel
15 engaged in arm's-length negotiations with Microsoft concerning an appropriate award of
16 attorneys' fees and expenses for Plaintiffs' Counsel. Microsoft, with the approval of the
17 current Board in the exercise of its independent business judgment, has agreed to pay to
18 Plaintiffs' Counsel's attorneys' fees and expenses in the total amount of \$7,300,000 (the
19 "Agreed Fee"), subject to Court approval.

20 5.2 Plaintiffs' Counsel shall seek Court approval of the Agreed Fee. Microsoft
21 shall pay the full amount of any attorneys' fees and expenses awarded by the Court (the "Fee
22 Award") to an account designated by Plaintiffs' Settlement Counsel within five (5) business
23 days of entry of the Court's order awarding the Fee Award, notwithstanding the existence of
24 any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on
25 the Settlement or any part thereof, subject to Plaintiffs' Settlement Counsel's obligation to
26 make appropriate refunds or repayments to Microsoft if the Settlement is terminated pursuant

1 to the terms of this Stipulation or if, as a result of any appeal or further proceedings on
2 remand, or successful collateral attack, the Fee Award is reduced or reversed and such order
3 reducing or reversing the award has become Final. Plaintiffs' Settlement Counsel shall make
4 the appropriate refund or repayment in full no later than ten (10) business days after: (i)
5 receiving from Defendants' Counsel notice of the termination of the Settlement; or (ii) any
6 order reducing or reversing the Fee and Expense Award has become Final.

7 5.3 Payment of the Fee Award shall constitute final and complete payment for
8 Plaintiffs' Counsel's attorneys' fees and expenses that have been incurred or will be incurred
9 in connection with the initiation, prosecution, pendency, and settlement of the Action.
10 Plaintiffs' Settlement Counsel shall have the sole authority for the allocation and
11 distribution of the Fee Award to Plaintiffs' Counsel. Defendants and Defendants' Counsel
12 shall have no responsibility for the allocation or distribution of the Fee and Expense Award
13 amongst Plaintiffs' Counsel. Defendants or Defendants' Counsel shall have no obligation to
14 make any payment to Plaintiffs or Plaintiffs' Counsel other than as provided in this
15 Stipulation.

16 5.4 In light of the substantial benefits they have helped to create for Microsoft and
17 Current Microsoft Shareholders, Plaintiffs may apply to the Court for approval of incentive
18 awards in the amount of \$5,000 each (the "Incentive Awards"). The Incentive Awards shall
19 be funded from the Fee Award.

20 **6. Conditions of Settlement; Termination and Effect of Termination**

21 6.1 The Effective Date of the Settlement shall be deemed to occur on the
22 occurrence or waiver of all of the following events:

23 (i) the Court has entered the Preliminary Approval Order, substantially in
24 the form set forth in Exhibit B attached hereto;

25 (ii) Plaintiffs have not exercised their option to terminate the Settlement
26 pursuant to ¶ 6.2 below;

1 (iii) Defendants have not exercised their option to terminate the Settlement
2 pursuant to ¶ 6.2 below; and

3 (iv) the Court has approved the Settlement as described herein, following
4 notice to Current Microsoft Stockholders and a hearing, and entered the Judgment,
5 substantially in the form set forth in Exhibit E attached hereto, and the Judgment has become
6 Final.

7 6.2 Plaintiffs (provided Plaintiffs unanimously agree amongst themselves) and
8 Defendants (provided Defendants unanimously agree amongst themselves) shall each have the
9 right to terminate the Settlement and this Stipulation, by providing written notice of their
10 election to do so (“Termination Notice”) to the other Parties within thirty (30) calendar days
11 of: (i) the Court’s final refusal to enter the Preliminary Approval Order in any material
12 respect; (ii) the Court’s final refusal to approve the Settlement or any material part thereof; (ii)
13 the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; or
14 (iv) the date upon which an order vacating, modifying, revising, or reversing the Settlement
15 becomes Final, and the provisions of ¶ 6.3 below shall apply. However, any decision or
16 proceeding, whether in this Court or any appellate court, solely with respect to the Fee Award
17 shall not be considered material to the Settlement, shall not affect the finality of the Judgment,
18 and shall not be grounds for termination of the Settlement.

19 6.3 In the event that the Settlement is terminated pursuant to ¶ 6.2 above or the
20 Effective Date otherwise fails to occur, the Parties shall be restored to their respective
21 positions in the Action as of immediately prior to the Execution Date of this Stipulation, and
22 the terms and provisions of this Stipulation, with the exception of this ¶ 6.3 and 7.1 below,
23 shall have no further force and effect with respect to the Parties and shall not be used in the
24 Action or in any other proceeding for any purpose, and any judgment or orders entered by the
25 Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro*
26 *tunc*.

1 **7. No Admission of Wrongdoing**

2 7.1 Neither this Stipulation (whether or not consummated), including the exhibits
3 hereto, the negotiations leading to the execution of this Stipulation, nor any proceedings taken
4 pursuant to or in connection with this Stipulation and/or approval of the Settlement (including
5 any arguments proffered in connection therewith): (i) shall be offered against any of the
6 Defendants' Released Persons as evidence of, or construed as, or deemed to be evidence of
7 any presumption, concession, or admission by any of the Defendants' Released Persons with
8 respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or
9 could have been asserted or the deficiency of any defense that has been or could have been
10 asserted in the Action or in any other litigation, or of any liability, negligence, fault, or other
11 wrongdoing of any kind of any of the Defendants' Released Persons or in any way referred to
12 for any other reason as against any of the Defendants' Released Persons, in any civil, criminal
13 or administrative action or proceeding, other than such proceedings as may be necessary to
14 effectuate the Settlement; or (ii) shall be offered against any of the Plaintiffs' Released
15 Persons as evidence of, or construed as, or deemed to be evidence of any presumption,
16 concession or admission by any of the Plaintiffs' Released Persons that any of Plaintiffs'
17 claims are without merit, that any of the Defendants had meritorious defenses, or that
18 damages recoverable under the Complaint would not have exceeded the Settlement
19 consideration or with respect to any liability, negligence, fault or wrongdoing of any kind, or
20 in any way referred to for any other reason as against any of the Plaintiffs' Released Persons,
21 in any civil, criminal or administrative action or proceeding, other than such proceedings as
22 may be necessary to effectuate the Settlement; provided, however, that the Parties, the
23 Released Persons, and their respective counsel may file the Stipulation and/or the Judgment in
24 any action that may be brought against them in order to support a defense or counterclaim
25 based on principles of *res judicata*, collateral estoppel, release, good-faith settlement,

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1 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or
2 similar defense or counterclaim.

3 **8. Miscellaneous Provisions**

4 8.1 All of the exhibits attached hereto are hereby incorporated by reference as
5 though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a
6 conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit
7 attached hereto, the terms of the Stipulation shall prevail.

8 8.2 Plaintiffs and their counsel and Defendants and their counsel agree not to assert
9 in any forum that this Action was brought by Plaintiffs or defended by Defendants in bad faith
10 or without a reasonable basis. No Party shall assert any claims of any violation of Fed. R.
11 Civ. P. 11 relating to the institution, prosecution, defense, or settlement of this Action. The
12 Parties agree that the Settlement consideration and the other terms of the Settlement were
13 negotiated at arm's-length and in good faith by the Parties, and reflect the Settlement that was
14 reached voluntarily after extensive negotiations and consultation with experienced legal
15 counsel, who were fully competent to assess the strengths and weaknesses of their respective
16 clients' claims or defenses.

17 8.3 Defendants and their counsel, in any statement made to any media
18 representative (whether or not for attribution) will not assert that the Action was commenced
19 or prosecuted in bad faith nor will they deny that the Action was commenced and prosecuted
20 in good faith and is being settled voluntarily after consultation with competent legal counsel.
21 In all events, Plaintiffs and their counsel and Defendants and their counsel shall not make any
22 accusations of wrongful or actionable conduct by either Party concerning the institution,
23 prosecution, defense, or settlement of the Action, and shall not otherwise suggest that the
24 Settlement constitutes an admission of any claim or defense alleged.

1 8.4 The terms of the Settlement, as reflected in this Stipulation, may not be
2 modified or amended, nor may any of its provisions be waived except by a writing signed on
3 behalf of each of the Parties (or their successors-in-interest).

4 8.5 The headings herein are used for the purpose of convenience only and are not
5 meant to have legal effect.

6 8.6 The administration and consummation of the Settlement as embodied in this
7 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for
8 the purpose of entering orders providing for an award of attorneys' fees and expenses to
9 Plaintiffs' Counsel and enforcing the terms of this Stipulation.

10 8.7 The waiver by one Party of any breach of this Stipulation by any other Party
11 shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

12 8.8 This Stipulation and its exhibits constitute the entire agreement among
13 Plaintiffs and Defendants concerning the Settlement and this Stipulation and its exhibits. All
14 Parties acknowledge that no other agreements, representations, warranties, or inducements
15 have been made by any Party hereto concerning this Stipulation or its exhibits other than those
16 contained and memorialized in such documents.

17 8.9 This Stipulation may be executed in one or more counterparts, including by
18 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via
19 email. All executed counterparts and each of them shall be deemed to be one and the same
20 instrument.

21 8.10 This Stipulation shall be binding upon and inure to the benefit of the successors
22 and assigns of the Parties, including any and all Released Persons and any corporation,
23 partnership, or other entity into or with which any Party hereto may merge, consolidate or
24 reorganize.

25 8.11 The construction, interpretation, operation, effect and validity of this
26 Stipulation and all documents necessary to effectuate it shall be governed by the internal laws
27

1 of the State of Washington without regard to conflicts of laws, except to the extent that federal
2 law requires that federal law govern.

3 8.12 Any action arising under or to enforce this Stipulation or any portion thereof,
4 shall be commenced and maintained only in the Court.

5 8.13 This Stipulation shall not be construed more strictly against one Party than
6 another merely by virtue of the fact that it, or any part of it, may have been prepared by
7 counsel for one of the Parties, it being recognized that the Stipulation is the result of arm's-
8 length negotiations between the Parties and all Parties have contributed substantially and
9 materially to the preparation of this Stipulation.

10 8.14 All counsel and any other person executing this Stipulation and any of the
11 exhibits hereto, or any related Settlement documents, warrant and represent that they have the
12 full authority to do so and that they have the authority to take appropriate action required or
13 permitted to be taken pursuant to the Stipulation to effectuate its terms.

14 8.15 Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one
15 another in seeking Court approval of the Preliminary Approval Order and the Settlement, as
16 embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all
17 such other documentation as may be reasonably required to obtain final approval by the Court
18 of the Settlement.

19 8.16 If any Party is required to give notice to another Party under this Stipulation,
20 such notice shall be in writing and shall be deemed to have been duly given upon receipt of
21 hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be
22 provided as follows:

23 If to Plaintiffs or Plaintiffs' Counsel: THE WEISER LAW FIRM, P.C.
24 Robert B. Weiser
25 22 Cassatt Avenue, First Floor
26 Berwyn, PA 19312
Email: rw@weiserlawfirm.com
Phone: (610) 225-2677
Fax: (610) 408-8062

BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP

Mark Lebovitch
1285 Avenue of the Americas
New York, New York 10019
Email: markl@blbglaw.com
Phone: (212) 554-1400
Fax: (212) 554-1444

If to the Individual Defendants:

DAVIS WRIGHT TREMAINE LLP

Stephen M. Rummage
1201 Third Avenue, Suite 2200
Seattle, Washington 98101
Email: stephenrummage@dwt.com
Phone: (206) 622-3150
Fax: (206) 757 7700

If to Microsoft:

ORRICK, HERRINGTON &
SUTCLIFFE LLP

Daniel J. Dunne
701 5th Avenue, Suite 5600
Seattle, Washington 98104-7079
Email: ddunne@orrick.com
Phone: (206) 839-4300
Fax: (206) 839-4301

8.17 Except as otherwise provided herein, each Party shall bear its own costs.

8.18 Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

8.19 All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated as of October 28, 2015.

Dated: October __, 2015

THE WEISER LAW FIRM, P.C.

By: _____

STIPULATION AND AGREEMENT OF
SETTLEMENT
LEAD CASE NO: 2:14-CV-00540-JCC

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Dated: October 28, 2015

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kryan@rmclasslaw.com

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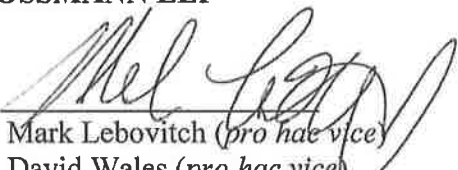
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29 STIPULATION AND AGREEMENT OF
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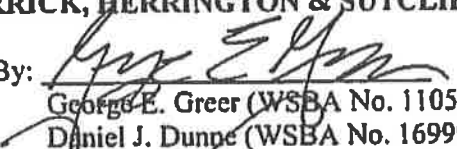
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