

**ORIGINAL FILED**  
Los Angeles Superior Court

JAN 09 2012

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By *[Signature]* Deputy  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**LOS ANGELES COUNTY**

BC476413

MAX SMITH, individually and on behalf )  
of all others similarly situated, )

Plaintiff, )

v. )

MICROSOFT CORPORATION, a )  
Delaware corporation, )

Defendant. )

) Case No.

) COMPLAINT FOR:

) (1) Violations of Cal. Civ. Code § 1798.83

) (2) Violations of Cal. Bus. & Prof. Code  
§§ 17200, *et seq.*

) DEMAND FOR JURY TRIAL

) CLASS ACTION

**FAXED**

This case is assigned to Dept. 324 at the Central Civil West Courthouse  
for COMPLEX DETERMINATION ONLY *H. Edelson*

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CIT/CASE: 31007641 LEA/DEFH;  
RECEIPT #: CCH118782018  
DATE PAID: 01/09/12 09:48:09 AM  
PAYMENT: \$550.00 0310  
RECEIVED:  
CHECK: 550.00  
CASH:  
CHANGE:  
CARD:  
CIT/CASE: 31007641 LEA/DEFH;  
RECEIPT #: CCH118782018  
DATE PAID: 01/09/12 09:48:09 AM  
PAYMENT: \$395.00 0310  
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CLASS ACTION COMPLAINT

1 Plaintiff, Max Smith ("Plaintiff"), by and through his attorneys, upon personal knowledge  
2 as to himself and his own acts, and upon information and belief as to all other matters, complains  
3 and alleges as follows:

#### 4 NATURE OF THE ACTION

5 1. In 2003, the California Legislature passed the Shine the Light Law, Cal. Civ.  
6 Code § 1798.83 (the "Shine the Light Law" or the "Act"), to protect consumers from companies  
7 that collect and surreptitiously share their sensitive personal information with third parties. In  
8 support of the bill, its author, Senator Liz Figueroa, aptly commented:

9 [s]ecret direct marketing "profiles" of consumers are being exchanged every hour  
10 invisibly and routinely by the companies with which they do business. Not only  
11 are consumers powerless to stop such invasions of privacy, they do not even know  
12 whether and to what extent it is taking place.<sup>1</sup>

13 2. The Act empowers consumers to "shine the light" on companies' data sharing  
14 methods by requiring businesses to establish a procedure by which customers can receive an  
15 explanation of how their personal information is disclosed to third parties (the "Shine the Light  
16 Disclosures" or "Disclosures").

17 3. Businesses governed by the Act are required to: (1) designate a dedicated mailing  
18 address (physical or electronic) or phone/facsimile number where customers can request the  
19 company's Shine the Light Disclosures, and (2) ensure that interested customers can readily  
20 make such requests or otherwise obtain the Disclosures.

21 4. Shine the Light Disclosures are necessary because without knowledge of  
22 companies' data sharing practices, consumers cannot make informed decisions about which  
23 businesses they should entrust with their personal information:

24 Because privacy is, by definition, so intensely personal, for a consumer to make a

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25 <sup>1</sup> CALIFORNIA SENATE JUDICIARY COMMITTEE, SB 27 BILL ANALYSIS, Sept. 16, 2003,  
26 available at [http://info.sen.ca.gov/pub/03-04/bill/sen/sb\\_0001-0050/sb\\_27\\_cfa\\_20030916\\_115403\\_sen\\_comm.html](http://info.sen.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_27_cfa_20030916_115403_sen_comm.html) (last visited January 6, 2012).

1 rational and informed and personal choice to opt-in, opt-out, or simply take their  
2 business elsewhere, the consumer must know the “who, what, where and when”  
of how a business handles personal information.<sup>2</sup>

3 5. While traditional businesses may display or otherwise make Shine the Light  
4 Disclosures available at their physical storefront locations, the Act requires companies with no  
5 “brick and mortar” locations to either provide the Shine the Light Disclosures on their websites  
6 or to train their managers and employees to notify customers of the addresses and phone  
7 numbers where the Shine the Light Disclosures can be obtained.

8 6. Defendant Microsoft Corporation (“Microsoft”)—a computer and media  
9 technology company with no “brick and mortar” storefronts—owns and operates the Internet  
10 websites www.microsoft.com, www.login.live.com, and www.xbox.com.

11 7. Microsoft collects and stores a wealth of information about its subscribers, and  
12 shares such data with third parties for direct marketing purposes.

13 8. Despite the fact that Microsoft profits by sharing its users’ personal information,  
14 it intentionally keeps its users in the dark on its information sharing practices by failing to make  
15 the Shine the Light Disclosures on its website.

16 9. As a result, Microsoft violates the Shine the Light Law by willfully denying its  
17 users an opportunity to exercise their legally proscribed rights under the Act. Therefore, Plaintiff  
18 and the Class are entitled to civil penalties of three thousand dollars (\$3,000.00) per violation  
19 pursuant to California Civil Code section 1798.84(c).

20 **PARTIES**

21 10. Plaintiff, Max Smith, is a natural person and resident of the State of California.

22 11. Defendant, Microsoft Corporation, is a Delaware corporation with its principal  
23 place of business at One Microsoft Way, in the City of Redmond, and State of Washington.  
24 Microsoft does business throughout California and the United States.

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<sup>2</sup> *Supra*, note 1, pp. 4-5.

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**JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over the causes of action asserted herein pursuant to the California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial courts.

13. This Court has personal jurisdiction over Microsoft because the improper conduct alleged in the Complaint occurred in, was directed to, and/or emanated from California.

14. Venue is proper in this Court because a substantial part of Microsoft's conduct at issue originated or occurred in this County, and because Plaintiff resides in this County.

**FACTUAL BACKGROUND**

**I. The Personal Information Market: Consumer Data Has Monetary Value**

15. In 2001, Federal Trade Commission ("FTC") Commissioner Orson Swindle recognized that "the digital revolution ... has given an enormous capacity to the acts of collecting and transmitting and flowing of information, unlike anything we've ever seen in our life ... [and] individuals are concerned about being defined by the existing data on themselves."<sup>3</sup>

16. More than a decade later, Commissioner Swindle's comments ring truer than ever, as consumer data feeds an information marketplace that supports a \$26 billion dollar per year online advertising industry in the United States.<sup>4</sup>

17. The FTC has also recognized that consumer data possesses inherent monetary value within the new information marketplace:

Most consumers cannot begin to comprehend the types and amount of information collected by businesses, or why their information may be commercially valuable. *Data is currency. The larger the data set, the greater*

<sup>3</sup> The Information Marketplace, Merging and Exchanging Consumer Data, <http://www.ftc.gov/bcp/workshops/infomkplace/transcript.htm> (last visited January 6, 2012).

<sup>4</sup> *See*, Web's Hot New Commodity: Privacy, <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited January 6, 2012).

potential for analysis—and profit.<sup>5</sup>

1  
2 18. In today's digital marketplace, consumers engage in *quid pro quo* transactions  
3 with online businesses whereby individuals exchange personal information for services.

4 19. It is now a nearly ubiquitous practice for online companies that collect consumer  
5 information—such as, names, addresses, occupations, political and religious affiliations, sexual  
6 orientation, education, and cultural interests—to share such data, for a profit, with numerous  
7 third party marketers without any input from, or disclosure to, the source consumer.

8 20. In fact, consumers' personal information has become such a valuable commodity  
9 that companies now offer individuals the opportunity to sell their personal information  
10 themselves.<sup>6</sup> In this way, consumers are becoming more empowered to direct where their  
11 personal information is shared, and to directly profit from their own data.

12 21. Because Microsoft deprives its users the ability to control the dissemination of  
13 their personal information—by denying them the ability to ascertain where such data is  
14 flowing—Microsoft has diluted the value of its users' property as it exists in the personal  
15 information market.

## 16 **II. California's Shine the Light Law**

17 22. The Shine the Light Law was enacted because while “transparency is the  
18 touchstone of consumer confidence in information handling ... by and large, consumers are not  
19 aware of the extent to which their personal information is sold.”<sup>7</sup> Thus, the Act is designed to  
20 “shine the light” on how businesses share and profit from their customers' personal information.

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21 <sup>5</sup> Statement of FTC Commissioner Pamela Jones Harbour,  
22 <http://www.ftc.gov/speeches/harbour/091207privacyroundtable.pdf> (last visited January 6, 2012)  
(emphasis added).

23 <sup>6</sup> “You Want My Personal Data? Reward Me for It,”  
24 <http://www.nytimes.com/2010/07/18/business/18unboxed.html> (last visited January 6, 2012).

25 <sup>7</sup> See, CALIFORNIA SENATE JUDICIARY COMMITTEE, SB 27 BILL ANALYSIS, Sept. 16, 2003,  
26 available at [http://info.sen.ca.gov/pub/03-04/bill/scn/sb\\_0001-](http://info.sen.ca.gov/pub/03-04/bill/scn/sb_0001-0050/sb_27_cfa_20030916_115403_sen_comm.html)  
27 [0050/sb\\_27\\_cfa\\_20030916\\_115403\\_sen\\_comm.html](http://info.sen.ca.gov/pub/03-04/bill/scn/sb_0001-0050/sb_27_cfa_20030916_115403_sen_comm.html) (last visited January 6, 2012).

1 23. As such, under the Act, customers may request, and companies doing business in  
2 California must provide, a list of all categories of personal information disclosed by the business  
3 within the preceding year, as well as the names and addresses of the companies receiving that  
4 information. Cal. Civ. Code § 1798.83(a).

5 24. To facilitate such requests, the Act requires businesses to “designate a mailing  
6 address, electronic mail address, or, if the business chooses to receive requests by telephone or  
7 facsimile, a toll-free telephone or facsimile number, to which customers may deliver requests” to  
8 discover how their personal information is being shared with third parties. Cal. Civ. Code §  
9 1798.83(b)(1).

10 25. The term “personal information” is broadly defined under the Act, and includes,  
11 but is not limited to, an individual’s:

12 (A) name and address; (B) electronic mail address; (C) age or date of birth; (D)  
13 names of children; (E) electronic mail or other addresses of children; (F) number  
14 of children; (G) age or gender of children; (H) height; (I) weight; (J) race; (K)  
15 religion; (L) occupation; (M) telephone number; (N) education; (O) political party  
16 affiliation; (P) medical condition; (Q) drugs, therapies, or medical products or  
17 equipment used; (R) the kind of product the customer purchased, leased, or  
18 rented; (S) real property purchased, leased, or rented; (T) the kind of service  
19 provided; (U) social security number; (V) bank account number; (W) credit card  
20 number; (X) debit card number; (Y) bank or investment account, debit card, or  
21 credit card balance; (Z) payment history; and (AA) information pertaining to the  
22 customer’s creditworthiness, assets, income, or liabilities.

23 Cal. Civ. Code § 1798.83(e)(7).

24 26. An Internet business with no “brick and mortar” locations may comply with the  
25 Act by adhering to the following provision:

26 Add to the home page of its Web site a link either to a page titled “Your Privacy  
27 Rights” or add the words “Your Privacy Rights” to the home page’s link to the  
28 business’s privacy policy ... The first page of the link shall describe a customer’s  
rights pursuant to this section and shall provide the designated mailing address, e-  
mail address, as required, or toll-free telephone number or facsimile number, as  
appropriate.

Cal. Civ. Code § 1798.83(b)(1)(B).

27 27. Alternatively, and in cases where an Internet business has “employees who  
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1 regularly have contact with customers," a business may:

2 Notify all agents and managers who directly supervise employees who regularly  
3 have contact with customers of the designated address or numbers or the means to  
4 obtain those addresses or numbers and instruct those employees that customers  
5 who inquire about the business's privacy practices or the business's compliance  
6 with this section shall be informed of the designated addresses or numbers or the  
7 means to obtain the addresses or numbers.

8 Cal. Civ. Code § 1798.83(b)(1)(A).

9 28. In short, the Act affords California citizens the right to discover whether  
10 businesses are sharing their personal information, and if so, which companies or organizations  
11 they are sharing such data with.

12 **III. A Brief Overview of Microsoft**

13 29. Microsoft is a computer, media, and gaming technology company that operates  
14 several websites, including, www.microsoft.com, login.live.com, and www.xbox.com.

15 30. In order to subscribe to one of its websites, consumers are required to provide  
16 Microsoft with certain personal information, including, *inter alia*, their name and address, e-mail  
17 address, telephone number, gender, and date of birth.

18 31. Microsoft maintains this data on its servers.

19 **IV. Microsoft Willfully Violates California's Shine the Light Law**

20 32. Microsoft shares its subscribers' personal information, including their names,  
21 addresses, e-mail addresses, gender, and dates of birth with third parties for direct marketing  
22 purposes.

23 33. Despite the fact that Microsoft shares information about its users with third parties  
24 for direct marketing purposes, it fails to provide its customers with the Shine the Light  
25 Disclosures, or the means through which its customers may obtain the Disclosures, as required  
26 by the Act.

27 34. As such, Microsoft has chosen to deny California customers their legal right to  
28 learn what personal information is being disclosed, who is receiving it, and other legal  
protections afforded under the Act.

1 35. Accordingly, Microsoft intentionally violates California's Shine the Light Law  
2 and is liable for civil penalties of three thousand dollars (\$3,000.00) per violation pursuant to  
3 Cal. Civ. Code § 1798.84(c).

4 **FACTS RELATING TO PLAINTIFF MAX SMITH**

5 36. Plaintiff Max Smith is a natural person domiciled in the State of California.

6 37. In or around 2010, Plaintiff registered for an online account with Microsoft.

7 38. At the time that Plaintiff signed up for his subscription, he provided personal  
8 information to Microsoft, including, *inter alia*, his full name, mailing address, e-mail address,  
9 ZIP code, telephone number, gender, and birth date.

10 39. Plaintiff has visited [www.login.live.com](http://www.login.live.com) and [www.xbox.com](http://www.xbox.com) on numerous  
11 occasions since registering in or around 2010. At all relevant times, Plaintiff used Microsoft and  
12 the websites primarily for personal, family, and household purposes.

13 **CLASS ALLEGATIONS**

14 40. **Definition of the Class:** Plaintiff Max Smith brings this action pursuant to  
15 California Code of Civil Procedure § 382 on behalf of himself and a Class of similarly situated  
16 individuals, defined as follows:

17 All California residents who have provided personal information to Microsoft.

18 Excluded from the Class are (1) Defendant, Defendant's agents, subsidiaries, parents,  
19 successors, predecessors, and any entity in which the Defendant or their parents have a  
20 controlling interest and their current and former employees, officers, and directors, (2) the Judge  
21 or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's  
22 immediate family, (3) persons who execute and file a request for exclusion, (4) the legal  
23 representatives, successors, or assigns of any such excluded person, and (5) all persons who have  
24 previously had claims similar to those alleged herein finally adjudicated or who have released  
25 their claims against Defendant.

26 41. **Numerosity:** The exact number of the members of the Class is unknown and is  
27



1 not available to Plaintiff, but the Class is believed to consist of millions of individuals. Thus,  
2 individual joinder in this case is impracticable. Class members can be easily identified through  
3 Defendant's records.

4       **42. Commonality and Predominance:** There are many questions of law and fact  
5 common to the claims of Plaintiff and the other members of the Class, and those questions  
6 predominate over any questions that may affect individual members of the Class. Common  
7 questions for the Class include but are not limited to the following:

- 8           (a) Whether the Class members are "customers" of Defendant, as that term is  
9           defined by Cal. Civ. Code § 1798.83(e)(1);
- 10          (b) Whether each Class member had an "established business relationship"  
11          with Defendant, as that term is defined by Cal. Civ. Code § 1798.83(e)(5);
- 12          (c) Whether Defendant made the Shine the Light Disclosures required by Cal.  
13          Civ. Code § 1798.83(b)(1)(B);
- 14          (d) Whether Defendant's website violates Civ. Code § 1798.83(b)(1)(B);
- 15          (e) Whether Defendant has employees who regularly have contact with  
16          customers, as defined by Cal. Civ. Code § 1798.83(e)(4);
- 17          (f) Whether Defendant otherwise complied with the requirements of Cal. Civ.  
18          Code § 1798.83(b)(1);
- 19          (g) Whether Defendant's failure to meet the notice requirements of §  
20          1798.83(b)(1)(B) constitutes a violation of § 1798.83;
- 21          (h) Whether Defendant's conduct constituted a willful, intentional, or reckless  
22          violation of § 1798.83; and
- 23          (i) Whether Plaintiff and the Class are entitled to injunctive relief.

24       **43. Typicality:** The factual and legal bases of Microsoft's liability to Plaintiff and to  
25 the other members of the Class are the same and resulted in injury to Plaintiff and all of the other  
26 members of the Class. Plaintiff and the other members of the Class have all suffered harm as a

1 result of Microsoft's wrongful conduct.

2       **44. Adequate Representation:** Plaintiff will fairly and adequately represent and  
3 protect the interests of the Class members, and have retained counsel competent and experienced  
4 in complex class actions. Plaintiff has no interest antagonistic to those of the Class and  
5 Defendant has no defenses unique to Plaintiff.

6       **45. Appropriateness:** This class action is appropriate for certification because class  
7 proceedings are superior to all other available methods for the fair and efficient adjudication of  
8 this controversy and joinder of all members of the Class is impracticable. The damages suffered  
9 by the individual members of the Class will likely be small relative to the burden and expense of  
10 individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct.  
11 Thus, it would be virtually impossible for the individual members of the Class to obtain effective  
12 relief for Defendant's misconduct. Even if each member of the Class could sustain such  
13 individual litigation, it would not be preferable to a class action because individual litigation  
14 would increase the delay and expenses to all parties due to the complex legal and factual  
15 controversies presented in this Complaint. By contrast, a class action presents far fewer  
16 management difficulties and provides the benefits of single adjudication, economy of scale, and  
17 comprehensive supervision by a single court. Economies of time, effort, and expense will be  
18 fostered and uniformity of decisions will be ensured.

19       **46. Policies Generally Applicable to the Class:** This class action is also appropriate  
20 for certification because Defendant has acted or refused to act on grounds generally applicable to  
21 the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief  
22 with respect to the Class as a whole. The policies of the Defendant challenged herein apply to  
23 and affect all members of the Class uniformly, and Plaintiff's challenge of these policies hinges  
24 on Defendant's conduct, not on facts or law applicable only to Plaintiff.

**FIRST CAUSE OF ACTION**  
**Violations of California's Shine the Light Law**  
**(Cal. Civ. Code § 1798.83)**  
**(On behalf of Plaintiff and the Class)**

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3 47. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

4 48. Plaintiff and the Class are "customers" of Microsoft, as that term is defined by  
5 Cal. Civ. Code § 1798.83(e)(1).

6 49. Plaintiff and the Class are engaged in an ongoing "established business  
7 relationship" with Microsoft as that term is defined by Cal. Civ. Code § 1798.83(e)(5).

8 50. Microsoft cannot utilize the notice option available under Cal. Civ. Code §  
9 1798.83(b)(1)(A) because, as a business operating almost exclusively online, it does not have  
10 "employees who regularly have contact with customers," as that term is defined by Cal. Civ.  
11 Code § 1798.83(e)(4).

12 51. In any event, and upon information and belief, Microsoft does not instruct or  
13 otherwise train its employees to respond to customer inquiries about obtaining Microsoft's Shine  
14 the Light Disclosures as required by Cal. Civ. Code § 1798.83(b)(1)(A).

15 52. Further, on information and belief, Microsoft does not conduct business through  
16 "brick and mortar" stores in California, meaning it cannot avail itself of the notice option set  
17 forth in Cal. Civ. Code § 1798.83(b)(1)(C).

18 53. Consequently, Microsoft must utilize the notice option under Cal. Civ. Code §  
19 1798.83(b)(1)(B). As such, Microsoft must affirmatively disclose specific information to its  
20 customers through its Web site.

21 54. Microsoft willfully violates the Act by, among other things, (i) failing to add a  
22 hyperlink entitled "Your Privacy Rights" to its home page, (ii) failing to add a hyperlink to a  
23 page titled "Your Privacy Rights," (iii) failing to designate a mailing address, e-mail address,  
24 telephone number, or facsimile number for customers to deliver requests, and/or (iv) failing to  
25 describe its California customers' rights under the Shine the Light Law. *See* Cal. Civ. Code §  
26 1798.83(b)(1)(B). (True and accurate copies of Microsoft's xbox.com and login.live.com home  
27

1 pages and privacy policies are attached as Exhibits A, B, and C, respectively.)

2 55. Plaintiff's and the Class's personal information has monetary value, and  
3 Microsoft's failure to comply with Cal. Civ. Code § 1798.83(b)(1) deprives Plaintiff and the  
4 Class of their statutorily-guaranteed right to monitor and control the disclosure and use of that  
5 data. As such, Microsoft has diluted the value of Plaintiff's and the Class's personal property,  
6 and deprived them of the opportunity to sell their personal property for their own financial gain.  
7 Accordingly, Plaintiff and the Class have sustained, and continue to sustain, monetary injuries as  
8 a direct and proximate cause of Microsoft's violation of Cal. Civ. Code § 1798.83.

9 56. Microsoft's failure to comply with Cal. Civ. Code § 1798.83(b) also deprives  
10 Plaintiff and the Class of the ability to make informed decisions with respect to their privacy and  
11 transmission of their personal information. Further, Microsoft's supposed privacy procedures  
12 provide fewer protections to Plaintiff and the Class, thereby depriving them of their protections  
13 and rights under the Act.

14 57. At all times relevant to this lawsuit, Microsoft has failed to provide Plaintiff or the  
15 Class with disclosures required by Cal. Civ. Code § 1798.83(b)(1).

16 58. Microsoft is a "business required to comply with [Section 1798.83]." and none of  
17 the exceptions in Sections 1798.83 or 1798.84 apply. *See* Cal. Civ. Code § 1798.83(b)(1).

18 59. Microsoft shares its customers' personal information with third parties for direct  
19 marketing purposes.

20 60. Accordingly, Plaintiff and the Class are entitled to civil penalties of three  
21 thousand dollars (\$3,000.00) per violation pursuant to California Civil Code section 1798.84(c).

22 **SECOND CAUSE OF ACTION**  
23 **Violation of California's Unfair Competition Law**  
24 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
25 **(On Behalf of Plaintiff and the Class)**

26 61. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

27 62. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code

1 §§ 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in  
2 commercial markets for goods and services.

3 63. The UCL prohibits any unlawful, unfair or fraudulent business act or practice.

4 64. As discussed above, Microsoft has violated the unlawful prong of the UCL in that  
5 its conduct violated the Shine the Light Law, Cal. Civ. Code § 1798.83.

6 65. Plaintiff's and the Class's personal information has monetary value, and  
7 Microsoft's failure to comply with Cal. Civ. Code § 1798.83(b) deprives Plaintiff and the Class  
8 of their statutorily-guaranteed right to monitor and control the disclosure and use of that data. As  
9 such, Microsoft has diluted the value of Plaintiff's and the Class's personal property, and  
10 deprived them of the opportunity to sell their personal property for their own financial gain.

11 66. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff, on his own behalf and on  
12 behalf of the Class, seeks an order requiring Microsoft to (1) immediately cease the unlawful  
13 practices described herein; (2) make full restitution of all funds wrongfully obtained by sharing  
14 and/or selling Plaintiff's and the Class's personal information; and (3) pay interest, attorneys'  
15 fees, and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Max Smith, individually and on behalf of the Class, prays for  
18 the following relief:

19 A. Certify the Class as defined above, appoint Plaintiff as Class representative, and  
20 designate his counsel as Class Counsel;

21 B. Declare that Defendant's actions, as described herein, violate California's Shine  
22 the Light Law, Cal. Civ. Code § 1798.83, and the Unfair Competition Law, Cal. Bus. & Prof.  
23 Code §§ 17200, *et seq.*;

24 C. Award injunctive and other equitable relief as is necessary to protect the interests  
25 of the Class, including, *inter alia*, entering an Order: (i) prohibiting Defendant from engaging in  
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1 the wrongful and unlawful acts described herein; and (ii) requiring Defendant to add to its  
2 website the information required by Cal. Civ. Code § 1798.83(b)(1)(B);

3 D. Award damages, including civil penalties of three thousand dollars (\$3,000.00)  
4 per violation of Cal. Civ. Code § 1798.83 to Plaintiff and the Class;

5 E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys'  
6 fees pursuant to Cal. Civ. Code § 1798.84(g) and Cal. Code Civ. Proc. § 1021.5;

7 F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent  
8 allowable; and

9 G. Award such other and further relief as equity and justice may require.


10 **JURY TRIAL**

11 Plaintiff demands a trial by jury for all issues so triable.

12  
13 Dated: January 9, 2012

Respectfully submitted,

14 **MAX SMITH, INDIVIDUALLY AND**  
15 **ON BEHALF OF ALL OTHERS SIMILARLY**  
16 **SITUATED,**

17 By:   
18 One of Plaintiff's attorneys

19 SEAN P. REIS (sreis@edelson.com) - SBN 184044  
20 EDELSON MCGUIRE, LLP  
21 30021 Tomas Street, Suite 300  
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ORIGINAL

SHORT TITLE Smith v. Microsoft	CASE NUMBER BC476413
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**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**FAXED**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL <sup>7</sup>  HOURS/  DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in central (other county, or no bodily injury/property damage).  | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.   | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                       | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                     | 10. Location of Labor Commissioner Office                  |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.	

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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	① 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.



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	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
		<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.		
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
<input type="checkbox"/> A6100 Other Civil Petition	2., 9.		

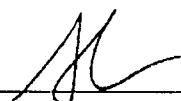
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**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 01. <input type="checkbox"/> 02. <input type="checkbox"/> 03. <input type="checkbox"/> 04. <input type="checkbox"/> 05. <input type="checkbox"/> 06. <input type="checkbox"/> 07. <input type="checkbox"/> 08. <input type="checkbox"/> 09. <input type="checkbox"/> 10.		ADDRESS: 340 N. Hayworth Ave. #103
CITY: Los Angeles	STATE: CA	ZIP CODE: 90048

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: 1-9-12

  
 \_\_\_\_\_  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.