

In The United States District Court For The Southern District Of Florida

IN RE AOL VERSION 5.0 SOFTWARE LITIGATION

OFFICIAL NOTICE OF PROPOSED SETTLEMENT OF PUTATIVE CLASS ACTION AND SETTLEMENT HEARING

IF YOU HAVE INSTALLED AOL VERSION 5.0 SOFTWARE ON YOUR COMPUTER, YOU MAY BE ELIGIBLE TO SHARE IN THE NET SETTLEMENT FUND.

Please read this carefully as it may affect your rights.

AOL Version 5.0 Software (the "5.0 Software") was released to the public in the fall of 1999. Beginning in late January 2000, putative class action complaints ("Complaints") were filed by consumers against America Online, Inc. and those Complaints alleged that consumers believed that they had various difficulties with the 5.0 Software. A proposed Settlement of those putative class action lawsuits has been reached. Under the proposed Settlement, persons who installed the 5.0 Software and file a proof of claim certifying under oath that they experienced difficulties may be eligible to participate in a \$15.5 million Settlement Fund, which fund will also cover the costs of notice to the Settlement class, administrative expenses, any attorneys' fees and expenses that the Court may award to Plaintiffs' Counsel and any service awards that the Court may award to the participating named plaintiffs, former named plaintiffs or declarants who have completed their discovery obligations in this action.

The expenses of the Settlement, Attorneys' Fees and Costs awarded to Plaintiffs' Counsel, and Service Awards (if any) will be deducted from the \$15.5 million Settlement Fund. Plaintiffs' Counsel estimate that the costs of providing notice and administering the Settlement will be \$1.5 million. Plaintiffs' Counsel intend to seek attorneys' fees of 30% of the Settlement Fund, (\$4.65 million) plus costs not to exceed \$1.3 million. Plaintiffs' Counsel will also seek service awards totaling approximately \$50,000. If the Court approves the attorneys' fees and cost application and the service awards, approximately \$8 million will be available to be distributed to the Settlement Class after payment of notice and administrative expenses. As explained in more detail below, the amount paid on any particular valid claim will depend upon, among other things, the number of valid claims received from Settlement Class Members and the level of Qualifying Documentation (as explained below) provided.

Plaintiffs conducted extensive discovery relating to the 5.0 Software, conducted depositions and retained experts to review the documentation regarding the 5.0 Software. After conducting this extensive discovery and after assessing the risks of litigation, Plaintiffs' Counsel believe that the Settlement described below is fair and equitable to the Class Members. There are basically three sets of allegations: (1) allegations relating to interoperability and connectivity, (2) allegations relating to the use of default settings, and (3) allegations relating to material instability and other claims.

With respect to interoperability and connectivity, there were public reports after the release of the 5.0 Software that certain AOL members who have the Microsoft Windows Operating System and the 5.0 Software may have had interoperability and connectivity problems, including but not limited to alleged difficulties connecting to an Internet Service Provider ("ISP") and/or accessing web pages and e-mail. The parties determined that users of the 5.0 Software with certain older versions of Microsoft's Windows Operating System may have experienced connectivity and interoperability issues, and that AOL had taken steps to address those issues, including but not limited to offering information on how to upgrade the Microsoft Windows Operating System.

With respect to the use of default settings, there were allegations that certain AOL members were finding it difficult to access other ISPs because of certain default settings provided by the Microsoft Windows Operating System and the 5.0 Software. The parties determined that many ISPs set default settings for consumers, and that AOL was providing information on how to change those default settings.

With respect to material instability, there were also public reports and allegations in the Complaints that the 5.0 Software caused computers to become materially unstable. Plaintiffs conducted discovery into these issues, and retained experts to assess these allegations. After conducting discovery and assessing the facts, Plaintiffs now believe that there is little probability of success on certain claims including, but not limited to, matters regarding these material instability claims. In these circumstances, Plaintiffs' Counsel believes that the proposed Settlement fairly and equitably settles claims.

Your Options: As described in more detail below, you can do the following with respect to the proposed Settlement:

- File a claim by filling out completely the attached Proof Of Claim and sending it to **5.0 Software Settlement, P.O. Box 8859, Melville, New York, 11747- 8859**, postmarked on or before September 6, 2002. If you do not submit a claim, you will not share in the Net Settlement Fund, if it is approved.
- Do nothing. Choosing to do nothing extinguishes your right to take independent legal action against America Online with respect to the claims explained in this notice.
- Exclude yourself from the Settlement and not participate in the Settlement (if it is approved), by following the instructions set out in Section 4 below.
- If you do not exclude yourself from the Settlement, you may Object to the Settlement by following the instructions set out in Section 6 below.

If you have any questions regarding this notice, please call 1-888-641-4434, or visit the website address at www.50softwareSettlement.com. However, please read the entire notice before calling or visiting the website. This notice is not an expression by the Court as to the fairness or adequacy of the Settlement. No inquiries should be directed to the Court.

I. THE SETTLEMENT CLASS

The proposed Settlement Class consists of "All persons in the United States who installed AOL 5.0 on his, her or its computer(s). Excluded from the Settlement Class are Defendant AOL; any entity in which AOL has a controlling interest; employees, officers or directors of AOL; the legal

representatives, heirs, successors, and assigns of AOL; and any plaintiff who has dismissed with prejudice his, her or its claims brought against AOL related to this Action.”

II. SUMMARY OF THE CLAIMS

Plaintiffs in this case, and in similar cases that have been consolidated into this action (collectively referred to as “the Action”), claim that the 5.0 Software was deceptively marketed, that the installation of the 5.0 Software made unauthorized changes to their computers, that the 5.0 Software interfered with their ability to access other ISPs, and that the 5.0 Software corrupted their computer systems. AOL denies strenuously that it has committed or has attempted to commit any violation of law and AOL specifically denies that it deceptively marketed the 5.0 Software, that the 5.0 Software makes unauthorized changes to computers, that the 5.0 Software interferes with the ability of users to access other ISPs or that the 5.0 Software corrupts computer systems. AOL believes that the 5.0 Software is a reliable software program that has made and continues to make using the Internet easy, safe, convenient and reliable.

III. SUMMARY OF THE PROPOSED SETTLEMENT

AOL has agreed to provide \$15.5 million into a Settlement Fund. From the Settlement Fund, Plaintiffs’ Counsel will distribute the Fund on the following basis, after deducting the costs of notice to the Settlement Class, administrative expenses, any fees and expenses that the Court may award to Plaintiffs’ Counsel and any service awards that the Court may award to the participating named plaintiffs, former named plaintiffs or declarants who have completed their discovery obligations in the Action.

A. Distribution Of The Settlement Fund to Settlement Class Members. To receive a share of the Net Settlement Fund, you must submit a Valid Proof Of Claim substantially in the form attached hereto, as explained below.

Each valid claim must include a Statement Under Oath (“Statement”) that (1) you installed the 5.0 Software on your computer after September 21, 1999; and (2) after you installed the 5.0 Software you were unable or had difficulty connecting to, accessing your e-mail with, or browsing websites with, your other ISP or LAN connection, or you believe your computer incurred material instability or another computer difficulty; and (3) your computer did not experience such difficulty before installing the 5.0 Software; and (4) that all of the information contained in the Proof Of Claim is true and correct.

In addition to the Statement, Class Members may also submit additional qualifying documentation in support of their claim. “Qualifying Documentation” is defined to include:

- (i) Verifiable third-party receipts for services rendered in order to resolve the computer difficulty asserted in the Proof Of Claim;
- (ii) Contemporaneous written correspondence from a third party concerning the computer difficulty asserted in the Proof Of Claim;
- (iii) Billing receipt, invoice or other proof of payment from a non-AOL ISP to show use of another ISP.

Recovery under the Settlement will be directly related to the level of proof provided by the Settlement Class Member, and each Proof Of Claim will be classified as follows:

<u>Level 1 Claim</u>	Statement with two (2) or more forms of Qualifying Documentation;
<u>Level 2 Claim</u>	Statement with one (1) form of Qualifying Documentation;
<u>Level 3 Claim</u>	Statement without any additional Qualifying Documentation.

The amount paid on any valid claim will depend on, among other things, the number of valid claims received from Settlement Class Members and the level of Qualifying Documentation provided.

The proposed plan for distributing the Net Settlement Fund is as follows. Each valid Level 1 claim will be paid the same amount; each valid Level 2 claim will be paid the same amount; and each valid Level 3 claim will be paid the same amount. The amount paid on any given claim will vary among the levels of claims, however, to further the objective of paying a higher recovery to Settlement Class Members who document their claims. Each Level 1 claim will be paid in an amount three times the amount for each Level 3 claim, and each Level 2 claim will be paid in an amount two times the Level 3 claim amount. Thus, if the amount paid on each Level 3 claim is “x,” then the amount for each Level 1 claim is “3x,” and for each Level 2 claim is “2x.”

The value of “x” will be calculated by the following equation:

$$\frac{\{(\text{Number of valid Level 1 claims} \} \textit{ times } (3x) \} \textit{ plus } \{(\text{Number of valid Level 2 claims} \} \textit{ times } (2x) \} \textit{ plus } \{(\text{Number of valid Level 3 claims} \} \textit{ times } (x) \}}{\text{}} = 100\% \text{ of the Net Settlement Fund.}$$

At this time, the parties cannot provide an estimate of the amount to be paid on any particular claim. The amount paid on each claim depends on, among other things, the number of valid claims submitted, the costs for notice and administration, the attorneys’ fees and expenses and any service awards awarded to participating named plaintiffs, former named plaintiffs or declarants to be deducted from the Settlement Fund, which are unknowable at this time. However, \$250 will be the maximum amount payable on a Level 1 claim; \$167 the maximum amount payable on a Level 2 claim; and \$83 the maximum amount payable on a Level 3 claim. **You should not view these maximum claim amounts as an estimate or projection of the amount that may actually be paid on your claim.**

Once the deadline for submitting claims has passed (September 6, 2002), the Claims Administrator will distribute the Net Settlement Fund among qualifying claimants according to the allocation plan described above. If there is a balance remaining in the Net Settlement Fund after all claims have

been paid, the Court will determine in its discretion the appropriate disposition of the Net Settlement Fund by (a) an additional distribution to the claimants of the Settlement class or (b) other appropriate disposition.

All Claims Will Be Subject to Verification. False Claims May Be Subject to Legal Prosecution.

In addition to the Fund described above, AOL has been providing the following benefits since May 2000 and has agreed to continue to provide such benefits to the Settlement Class until at least May 2003, if technically feasible:

- B. Hyperlink To Microsoft DUN 1.3 Upgrade. One of the core allegations raised by the Plaintiffs relates to Microsoft's DUN (Dial-Up Networking) component of Microsoft's Windows Operating System, specifically, that certain older versions of the Microsoft Windows 95 Operating System with older versions of Microsoft's DUN (DUN version 1.0) may make it more difficult for consumers, who use software with certain dialer adapters (such as the 5.0 Software), to connect to other ISPs.

The parties have in fact determined that there are certain older versions of Microsoft Windows 95 (Gold and OSR 1) that have a Microsoft DUN version 1.0 and Microsoft has recommended that consumers upgrade Microsoft Windows 95 Operating Systems to Microsoft DUN version 1.3. The Parties have also determined that certain allegations raised by plaintiffs and others relating to the alleged interoperability between the 5.0 Software and older versions of Microsoft's DUN component are resolved by installing Microsoft's free upgrade for DUN version 1.3.

Since May 16, 2000, AOL has provided a hyperlink for a download of Microsoft's DUN 1.3 in the AOL Online "Help" area on the AOL service. Thus, an AOL member can simply click on the hyperlink in the Online Help area and that member will be taken to the Microsoft support website for a free download of Microsoft's latest DUN. (Microsoft does not currently allow AOL to provide Microsoft's DUN 1.3 directly on the AOL Help website. If Microsoft allows AOL to provide Microsoft's DUN 1.3 upgrade directly on AOL's Help Site, AOL intends to do so.)

The Parties suggest that all Settlement Class Members keep their Microsoft Windows Operating Systems current and check their computers for viruses that may interfere with the operation of software applications on their computers.

- C. Information on The Microsoft DUN Upgrade. AOL has provided and will continue to provide live assistance on the Microsoft DUN 1.3 Upgrade issue 24 hours a day, 7 days a week, through its toll-free member services line. In addition, AOL will make available information and respond to questions regarding the Microsoft DUN issue through its toll-free assistance, its AOL Help site, and the Frequently Asked Questions (FAQs) section of AOL Help.
- D. Upgrade All AOL 6.0 Users To Microsoft DUN 1.3. AOL included Microsoft's DUN 1.3 in its AOL 6.0 software. Therefore, AOL 5.0 users who have not downloaded the Microsoft recommended DUN 1.3 to make their Microsoft Windows Operating System current will receive the Microsoft DUN 1.3 automatically by upgrading to AOL 6.0 or AOL 7.0. All parties recommend that, if feasible, AOL 5.0 users upgrade to AOL's latest software application, which is currently AOL 7.0, available at www.aol.com.
- E. Additional Language Regarding Settings. All parties agree that AOL asks whether the user wants to set AOL as its default for Internet applications (such as e-mail and browsing) unlike most other major ISPs. AOL will institute language for the setting of default Internet file associations which states in substance: "Would you like this copy of the AOL software to be your default Internet application for Web pages, newsgroups, and e-mail? Click No to keep your current settings. For more information, sign on and go to Keyword: Internet Help" on future versions of AOL software until May 2003. Consistent with industry standards, AOL sets itself as the default for internet connectivity only in the limited circumstances where the user had a particular Microsoft Windows Operating System, the user did not respond that the user had another method of accessing the Internet and if the 5.0 Software did not detect a network card. AOL will provide further notice that default settings may change as a result of installing AOL software until May 2003.

IV. YOUR OPTIONS WITH RESPECT TO THE PROPOSED SETTLEMENT

- A. Remain In The Settlement Class And Release Your Claims. You can remain in the Settlement Class and share in the Settlement by submitting an acceptable Proof Of Claim **postmarked no later than September 6, 2002**. If you (i) submit a claim form or (ii) do not submit a claim form but do not opt out pursuant to the following paragraph, you will remain in the Settlement Class and be deemed to have agreed to the Settlement. Unless you exclude yourself from the Settlement, you will remain a Settlement Class Member even if you do not file a proof of claim. This means you will release any and all claims, whether asserted directly, derivatively or otherwise, against AOL or any of its parent entities, affiliates, subsidiaries, predecessors, successors, or assigns, and each and all of their respective past, present or future officers, directors, associates, stockholders, controlling persons, representatives, employees, attorneys, financial or investment advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, or administrators, which have been or could have been asserted, whether under state, federal, common, or administrative law, relating in any manner to the Action.
- B. Release Of Named Plaintiffs, Former Named Plaintiffs, Declarants, And Plaintiffs' Counsel. In addition to the release noted above, AOL agreed to a limited release of the (i) current and former Class Representatives in this Action and in the underlying actions consolidated therein; and (ii) any other Settlement Class Member who filed Declarations or Affidavits in connection with this Action releasing claims arising from the facts, circumstances, statements and court filings related to this Action, including but not limited to claims for abuse of process or malicious prosecution. This limited release does not release the (i) current and former Class Representatives in this Action and in the underlying actions consolidated therein or (ii) any other Settlement Class Member who filed Declarations or Affidavits from any obligations arising out of their agreement to AOL's Terms of Service. AOL also agreed to a narrow release of Plaintiffs' Counsel releasing claims arising from the facts, circumstances, statements and court filings related to this Action, including but not limited to claims for abuse of process or malicious prosecution.
- C. Exclusion From The Settlement. You may decide that you do not want to participate in the Settlement. To exclude yourself, you must: send a letter or postcard, which **must be received no later than July 5, 2002**, and include your name, address, and telephone number; the name of the case (*ln*

re America Online, Inc. Version 5.0 Software Litigation, MDL Case No. 00-1341-MD-GOLD (S.D. Fla.)), to the Claims Administrator at: 5.0 Software Settlement, P.O. Box 8859, Melville, New York, 11747- 8859; a description of the computer (ideally, the year, make and model of the computer owned or leased and the serial number); the name and address of the person in whose name the computer is or was beneficially owned or leased; and a statement that you wish to be excluded from the Settlement Class.

If you validly request exclusion from the Settlement (i) you will be excluded from the Settlement Class and the Settlement, and cannot receive any benefits under, or object to, the Settlement; (ii) you will not be bound by the final judgment entered; and (iii) you will not be precluded from otherwise prosecuting any individual claim, if timely, that you may have related to the matters referred to in the complaints in this Action.

- D. Remain In The Settlement And Object To The Settlement. If you decide that you would like to participate in the Settlement class and/or the Settlement, you may still have the option of objecting to the Settlement under the procedures set forth in Section 6, below.

V. ATTORNEYS' FEES AND EXPENSES

The Court will determine the amount of the Settlement Fund to be awarded to Plaintiffs' Counsel for attorneys' fees and expenses incurred in prosecuting this Action. Plaintiffs' Counsel intend to apply for attorneys' fees in an amount not to exceed 30% of the Settlement Fund plus reimbursement of out-of-pocket expenses up to the amount of \$ 1,300,000. The Court will also determine whether to award and, if so, the appropriate amount of, any service awards for participating named plaintiffs, former named plaintiffs or declarants who participated in the Action. Plaintiffs' Counsel intend to seek service awards ranging between \$1,000 and \$5,000 for the participating named plaintiffs, former named plaintiffs and declarants, depending upon their level of participation in the Action. AOL reserves the right to object to plaintiffs' attorneys' fee and expense petition and any application for service awards to participating named plaintiffs, former named plaintiffs and declarants.

VI. THE SETTLEMENT HEARING

A hearing will be held before The Honorable Alan S. Gold at 1:30 p.m. on August 9, 2002, at the U.S. District Court, Southern District of Florida, Miami Division, 301 North Miami Avenue, Miami, FL 33128, to determine whether the proposed Settlement should be approved by the Court as fair, reasonable and adequate, whether this case should be dismissed with prejudice, whether Plaintiffs' Counsel should be awarded attorneys' fees and expenses and whether service awards should be ordered.

If you decide to participate in the Settlement and not to request exclusion, you may come to the hearing to support or to object to the Settlement or to the fee and expense application. You may choose to hire, at your own expense, an attorney to represent you for this purpose. If you object, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in this Notice, and, if your objection is rejected, you will be bound by the final judgment as if you had not objected. In order to object, you must file a written objection, including the basis and specific reasons for your objection, together with papers in support of your objection, with the Court. If you wish to be heard at the Settlement hearing, you must so indicate. Settlement Class members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard at the hearing. Objections must be filed by July 5, 2002 at the U.S. District Court, Southern District of Florida, Miami Division, 301 North Miami Avenue, Miami, FL 33128. You must also ensure that copies of your objection and any other supporting papers are received by the Counsel for the parties at the addresses listed below no later than July 8, 2002.

A. J. De Bartolomeo
GIRARD GIBBS
& De BARTOLOMEO, LLP
160 Sansome Street, Suite 300
San Francisco, CA 94104
Plaintiffs' Co-Lead Counsel

AOL Counsel
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

This notice is only a summary of the proposed Settlement. The full terms are set forth in detail in the Stipulation Of Settlement which is in the court file available for review during regular business hours at the office of the Clerk of the U.S. District Court, Southern District of Florida located at 301 North Miami Avenue, Miami, FL 33128. Contact the Claims Administrator (through the ways described above) with any questions about this Notice or the Proof of Claim form. NO INQUIRIES SHOULD BE DIRECTED TO THE COURT OR THE CLERK OF THE COURT.

Dated: March 27, 2002

By Order of the Court

THE HONORABLE ALAN S. GOLD