

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DIANNE L. KELLEY, et al.,	)	
	)	No. C07-00475 MJP
Plaintiffs,	)	
	)	STIPULATION AND ORDER
v.	)	STAYING ACTION PENDING
	)	APPEAL
MICROSOFT CORPORATION, a Washington	)	
Corporation,	)	<i>Note on Motion Calendar:</i>
	)	April 24, 2009
Defendant.	)	

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**STIPULATION**

Plaintiffs and Microsoft Corporation, by and through their undersigned counsel of record, stipulate to entry of the following Order and represent to the Court as follows:

1. On April 10, 2009, the Court entered its Order Denying Plaintiffs’ Motion for Narrowed Class Certification [Dkt. 362] (the “Order”).

2. In the Order, the Court directed the parties “to meet and confer on whether they wish to reset a trial date for the remaining individual claims or if they wish to file for leave to appeal.” Order [Dkt. 362] 18:16-19.

3. In discussions among counsel, Plaintiffs have advised that they intend to seek review of the Order from the United States Court of Appeals for the Ninth Circuit through a petition for permission to appeal under Federal Rule of Civil Procedure 23(f). Microsoft does

1 not oppose entry of a stay pending disposition of Plaintiffs' petition for permission to appeal  
2 or, if an appeal is allowed, pending disposition of the appeal.

3 4. Plaintiffs have advised that, but for this Stipulation and contemporaneously  
4 with their Rule 23(f) petition to the Ninth Circuit, they would have filed a motion with this  
5 Court requesting to stay this action pending the Washington Supreme Court's decision in  
6 *Schnall v. AT&T Wireless*, No. 80572-5 (argued Oct. 28, 2008). Microsoft opposes a stay  
7 pending the decision in *Schnall*. Nothing in this Stipulation shall affect Plaintiffs' right to  
8 seek, or Microsoft's right to oppose, such a stay in the event that *Schnall* remains undecided  
9 upon expiration of the stay set forth below.

10 DATED this 24th day of April, 2009.

11 Davis Wright Tremaine LLP  
12 Attorneys for Defendant  
13 Microsoft Corporation

14 By /s/ Stephen M. Rummage

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1 DATED this 24th day of April, 2009.

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**ORDER**

Based upon the foregoing Stipulation, all further proceedings in this action are stayed until the later of the (1) denial of Plaintiffs' petition for permission to appeal under Federal Rule of Civil Procedure 23(f) or (2) the Ninth Circuit's issuance of its mandate following disposition of Plaintiffs' appeal, if accepted.

Nothing in this Order shall affect Plaintiffs' right to seek, or Microsoft's right to oppose, a request to further stay this action in the event that *Schnall v. AT&T Wireless* remains undecided upon expiration of the stay set forth herein.

IT IS SO ORDERED.

DATED this 24th day of April, 2009.

  
Marsha J. Pechman  
United States District Judge

*Jointly Presented by:*

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By /s/ Stephen M. Rummage  
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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2009, I electronically filed the foregoing *Stipulation and [Proposed] Order Staying Action and Pending Appeal* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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