

The Honorable John C. Coughenour

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIM BAROVIC, derivatively on behalf of
MICROSOFT CORPORATION,

Plaintiff,

v.

STEVEN A. BALLMER, DINA D. DUBLON,
WILLIAM H. GATES III, MARIA M. KLAWE,
STEPHEN J. LUCZO, DAVID F.
MARQUARDT, CHARLES H. NOSKI,
HELMUT PANKE, JOHN W. THOMPSON,
PETER S. KLEIN, BRAD SMITH and B.
KEVIN TURNER,

Defendants,

and

MICROSOFT CORPORATION,

Nominal Defendant.

STEPHEN DIPHILOPO, derivatively on behalf of
MICROSOFT CORPORATION,

Plaintiff,

v.

STEVEN A. BALLMER, DINA D. DUBLON,
WILLIAM H. GATES III, MARIA M. KLAWE,

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

**STIPULATION CONSOLIDATING
RELATED ACTIONS, APPOINTING
CO-LEAD COUNSEL AND LIAISON
COUNSEL AND RELATED MATTERS
AND [PROPOSED] ORDER THEREON**

Noted for Consideration: May 20, 2014

Case No. 2:14-cv-00586-JCC

1 STEPHEN J. LUCZO, DAVID F.
2 MARQUARDT, CHARLES H. NOSKI,
3 HELMUT PANKE, JOHN W. THOMPSON,
4 PETER S. KLEIN, BRAD SMITH and B.
5 KEVIN TURNER,
6 Defendants,
7 and
8 MICROSOFT CORPORATION,
9 Nominal Defendant.

10 WHEREAS, there are presently two related shareholder derivative actions (the
11 “Actions”) against certain current and former officers and directors of Microsoft Corporation
12 (“Microsoft” or the “Company”) on file in this Court;

13 WHEREAS, the Actions meet the definition of LCR 3(f)(2)(A) and/or(B) because,
14 among other things, the Actions arise out of the same alleged transactions and occurrences and
15 involve the same or substantially similar alleged issues of fact and law, and, therefore, are
16 related and should be consolidated for all purposes pursuant to Rule 42 of the Federal Rule of
17 Civil Procedure (hereinafter referred to as the “Consolidated Action”);

18 WHEREAS, in an effort to facilitate and ensure consistent rulings and decisions, as well
19 as the avoidance of unnecessary duplication of effort, each of the undersigned counsel, on
20 behalf of all parties (defined herein) in the Actions enter into this stipulation. The parties and
21 counsel are: (1) The Weiser Law Firm, P.C., Law Office Of Alfred G. Yates, Jr., P.C., and
22 Badgley Mullins Turner PLLC on behalf of plaintiff Kim Barovic (“Barovic”); (2) Ryan &
23 Maniskas, LLP and Badgley Mullins Turner PLLC on behalf of plaintiff Stephen DiPhilipo
24 (“DiPhilipo”); (3) Davis Wright Tremaine LLP on behalf of defendants Steven A. Ballmer,
25 Dina D. Dublon, William H. Gates III, Maria M. Klawe, Stephen J. Luczo, David F. Marquardt,
26 Charles H. Noski, Helmut Panke, John W. Thompson, Peter S. Klein, Brad Smith and B. Kevin

1 Turner (the “Individual Defendants”); and (4) Orrick, Herrington & Sutcliffe LLP on behalf of
2 nominal defendant Microsoft.¹

3 WHEREAS, Microsoft and the Individual Defendants take no position as to the
4 appointment of The Weiser Law Firm, P.C. and Ryan & Maniskas, LLP as Co-Lead Counsel
5 for Plaintiffs (referred to hereinafter as “Co-Lead Counsel”) and Badgley Mullins Turner PLLC
6 as Liaison Counsel for Plaintiffs (referred to hereinafter as “Liaison Counsel”), but agree that
7 the appointment of Co-Lead Counsel and Liaison Counsel facilitates the orderly progress and
8 organization for litigation of the Consolidated Action;

9 WHEREAS, Barovic, DiPhilipo, Microsoft and the Individual Defendants (collectively,
10 the “Parties”) agree that it would be duplicative and wasteful of the Court’s resources for
11 Defendants to have to respond to the individual complaints filed in the Actions pending the
12 agreed-upon consolidation. Therefore, the Parties agree that, following entry of this order (the
13 “Consolidation Order”), the following schedule shall apply:
14

- 15 • Plaintiffs shall have 30 days from the entry of this Order to file and serve a single
16 Consolidated Complaint. The Consolidated Complaint will supersede all existing
17 complaints filed in the separate actions. Defendants need not respond to any of
18 the pre-existing complaints.
- 19 • Within 45 days after the filing and service of the Consolidated Complaint,
20 Defendants shall file and serve their answers or Motions in response. This
21 stipulation is without prejudice to the right of the Individual Defendants to file a
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23
24 ¹ Collectively, Microsoft and the Individual Defendants shall be referred to as “Defendants.” As
25 used herein, the term “Plaintiffs” refers to Barovic, DiPhilipo and any plaintiff in any Related
26 Case (as defined herein) that may in the future be consolidated with, and into, the Consolidated
Action.

1 Fed.R.Civ.P. 12 motion to dismiss after the Court has decided Microsoft's
2 motion to dismiss. Prior to filing any Motion(s), counsel for Defendants shall
3 confer with Co-Lead Counsel concerning a mutually agreeable proposed date
4 for the initial noting of the Motion(s) for consideration on the Court's motion
5 calendar.

- 6
- 7 • Plaintiffs, through Co-Lead Counsel, shall have 45 days to respond (the
8 "Opposition") to Defendants' motion(s) or answer(s). If more than one Motion
9 is filed, Co-Lead Counsel, on behalf of Plaintiffs, shall be permitted to file one
10 consolidated Opposition of a total page length equal to the collective total of the
11 pages of briefing submitted by Defendants in support of their Motion(s).
 - 12 • Defendants shall have 30 days to reply to Plaintiffs' response.²

13 Defendants need not file any response to the complaints on file until the time provided
14 above. No party is waiving any rights, claims, or defenses of any kind except as expressly
15 stated herein.

16
17 Now, therefore, the Parties hereto stipulate and the Court ORDERS as follows:

18 **I. CONSOLIDATION OF THE RELATED SHAREHOLDER DERIVATIVE ACTIONS**

19 The following actions are hereby related and consolidated for all purposes, including
20 pre-trial proceedings and trial (the "Consolidated Action"):

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24 ² The Parties agree to confer in good faith should any of the Parties, following entry of the
25 Consolidation Order, require a further stipulation (and proposed order thereon) seeking to
26 modify the provision of the Consolidation Order as to the Consolidated Complaint or to continue
the dates set for the filing, briefing or hearing of the Motion(s).

<u>Abbreviated Case Name</u>	<u>Case No.</u>	<u>Date Filed</u>
<i>Barovic v. Ballmer, et al.</i>	2:14-cv-00540 JCC	April 11, 2014
<i>DiPhilipo v. Ballmer, et al.</i>	2:14-cv-00586 JCC	April 18, 2014

II. CAPTION OF CONSOLIDATED ACTION

Every pleading filed in the Consolidated Action, or in any separate action included therein, shall bear the following caption:

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

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)	

III. MASTER DOCKET

The files of the Consolidated Action shall be maintained in one file, under Lead Case No. 2:14-cv-00540. When a document being filed pertains to all of the actions included within the Consolidated Action, the phrase “All Actions” shall appear immediately after the phrase “This Document Relates To:”. When a pleading applies only to some, but not all, of the actions included within the Consolidated Action, the document shall list, immediately after the phrase “This Document Relates To:”, the docket number for each individual action to which the document applies, along with the last name of the first-listed plaintiff in said action (*e.g.*, “Case No. 2:14-cv-00586 (DiPhilipo)”).

1 **IV. ORGANIZATION OF PLAINTIFFS' COUNSEL**

2 Co-Lead Counsel for Plaintiffs for the Consolidated Action is:

3 THE WEISER LAW FIRM, P.C.
4 Robert B. Weiser
5 Brett D. Stecker
6 Jeffrey J. Ciarlanto
7 22 Cassatt Avenue, First Floor
8 Berwyn, PA 19312
9 Telephone: (610) 225-2677
10 Facsimile: (610) 408-8062

11 and

12 THE WEISER LAW FIRM, P.C.
13 Kathleen A. Herkenhoff
14 12707 High Bluff Drive, Suite 200
15 San Diego, CA 92130
16 Telephone: (858) 794-1441
17 Facsimile: (858) 794-1450

18 and

19 RYAN & MANISKAS, LLP
20 Katharine M. Ryan
21 Richard A. Maniskas
22 995 Old Eagle School Road, Suite 311
23 Wayne, PA 19087
24 Telephone: 484-588-5516
25 Facsimile: 484-450-2582

26 Co-Lead Counsel shall have the authority to speak for Plaintiffs in matters regarding pre-trial procedure, trial, and settlement and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of the Consolidated Action and to avoid duplicative or unproductive effort.

1 Co-Lead Counsel shall be responsible for coordinating all activities and appearances on
2 behalf of Plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings
3 shall be initiated or filed by any of the Plaintiffs except through Co-Lead Counsel.

4 Liaison Counsel for Plaintiffs for the conduct of the Consolidated Action is:

5 BADGLEY MULLINS TURNER PLLC
6 Duncan C. Turner
7 19929 Ballinger Way, Suite 200
8 Shoreline, WA 98155
Telephone: (206) 621-6566
Facsimile: (206) 621-9686

9 Defendants' counsel may rely upon all agreements made with Lead Counsel and Liaison
10 Counsel, or other duly authorized representative of Lead Counsel, and such agreements shall be
11 binding on all Plaintiffs.

12 This Consolidation Order shall apply to each case meeting the definition of a "related"
13 case as set forth in LCR 3(f)(2) (A) or (B), or as is otherwise determined by the Court to be a
14 "related" case, including any such actions which are subsequently filed in, removed to, or
15 transferred to this Court (collectively referred to hereinafter as a "Related Case").
16

17 **V. NEWLY FILED, TRANSFERRED OR REMOVED RELATED CASES**

18 When any shareholder derivative action is filed in this Court, transferred to this Court, or
19 removed to this Court that appears to meet the definition of a Related Case or should be
20 considered as a Related Case (and therefore be consolidated with, and into, the Consolidated
21 Action), Co- Lead Counsel shall, upon notice of the existence of the Related Case, promptly file
22 a Notice of Related Case in both the Consolidated Action and in the Related Case, serve a copy
23 of this Consolidation Order (the "Notice") upon counsel of record for the plaintiff(s) in the
24 Related Case and any defendants in such Related Case that have not previously been named in
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1 the Actions (the “Related Case Parties”), and file a proof of service in the Consolidated Action
2 that such Notice has been given.

3 The Related Case Parties shall have three (3) business days following service of the
4 Notice to confer with Co-Lead Counsel and counsel for the Defendants. If, following such
5 conferences, any of the Related Case Parties do not agree that the subject action meets the
6 definition of a Related Case and shall be subject to all terms of the Order, such Related Case
7 Parties shall have, ten (10) business days (from service of the Notice) within which to file a
8 motion for entry of an order excepting such action from the terms of this Consolidation Order
9 (the “Motion”). Such Motion shall be first noted for consideration on the Court’s motion
10 calendar by the Related Case Parties pursuant to a stipulated agreement with Co-Lead Counsel
11 and counsel for Defendants in the Consolidated Action. If, however, following Notice, none of
12 the Related Case Parties files a Motion within the timeframe and subject to the procedures set
13 forth herein, the Court shall proceed to conduct any necessary review and enter an order, as
14 appropriate, directing that the Related Case be consolidated with, and into, the Consolidated
15 Action and be subject to the terms of this Consolidation Order.
16

17 **VI. PRESERVATION OF ALL CLAIMS AND DEFENSES**

18 Nothing herein shall be construed as effecting a waiver or concession by any of the
19 Parties. All Parties preserve all of their claims and defenses.
20

21 IT IS SO STIPULATED.
22

23 Dated: May 20, 2014

THE WEISER LAW FIRM, P.C.

24 By: s/Brett D. Stecker

25 BRETT D. STECKER

26 JEFFREY J. CIARLANTO

1 ROBERT B. WEISER (*pro hac vice* pending)
2 22 Cassatt Avenue, First Floor
3 Berwyn, PA 19312
4 Telephone: (610) 225-2677
5 Facsimile: (610) 408-8062
6 Email: bds@weiserlawfirm.com
7 jjc@weiserlawfirm.com

8 **THE WEISER LAW FIRM, P.C.**
9 KATHLEEN A. HERKENHOFF
10 12707 High Bluff Drive, Suite 200
11 San Diego, CA 92130
12 Phone: (858) 794-1441
13 Facsimile: (858) 794-1450
14 Email: kah@weiserlawfirm.com

15 *[Proposed] Co-Lead Counsel and Counsel for*
16 *Plaintiff Kim Barovic*

17 Dated: May 20, 2014

18 **RYAN & MANISKAS, LLP**

19 By: s/Richard A. Maniskas
20 Richard A. Maniskas
21 Katharine M. Ryan
22 995 Old Eagle School Road, Suite 311
23 Wayne, PA 19087
24 Telephone: 484-588-5516
25 Facsimile: 484-450-2582
26 Email: rmaniskas@rmclasslaw.com
kryan@rmclasslaw.com

[Proposed] Co-Lead Counsel and Counsel for
Plaintiff Stephen DiPhilipo

Dated: May 20, 2014

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By: s/Duncan C. Turner
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19929 Ballinger Way, Suite 200
Shoreline, WA 98155
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Facsimile: (206) 621-9686
Email: duncanturner@badgleyturner.com

[Proposed] Liaison Counsel and Counsel for Plaintiffs Kim Barovic and Stephen DiPhilipo

Dated: May 20, 2014

LAW OFFICE OF ALFRED G. YATES, JR., P.C.

Alfred G. Yates, Jr. (*pro hac vice* pending)
Gerald L. Rutledge (*pro hac vice* pending)
519 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
Telephone: (412) 391-5164
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Additional Counsel for Plaintiff Kim Barovic

Dated: May 20, 2014

DAVIS WRIGHT TREMAINE LLP

By: s/Brendan Mangan
Stephen Rummage
Brendan Mangan
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brendanmangan@dwt.com

Counsel for the Individual Defendants

Dated: May 20, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: s/Daniel J. Dunne
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Email: ddunne@orrick.com

ggreer@orrick.com
charlesha@orrick.com

Counsel for Nominal Defendant Microsoft

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: _____

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