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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 JAMES PORATH, individually on behalf of all
13 others similarly situated individuals,

14 Plaintiffs,

15 v.

16 LOGITECH, INC., a California corporation,

17 Defendant.

Case No. 3:18-cv-03091-WHA

***PLAINTIFF TAKES NO POSITION ON
RELIEF REQUESTED - NO HEARING
REQUESTED AND READY FOR
DECISION***

**DEFENDANT LOGITECH INC.'S
ADMINISTRATIVE MOTION TO STAY
THE CASE PENDING RESOLUTION
OF ITS RENEWED PETITION FOR A
WRIT OF MANDAMUS**

[L.R. 7-11]

Hon. William Alsup

Action Filed: May 23, 2018

*[Declaration of Dale J. Giali and Proposed
Order filed herewith]*

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT**, pursuant to Local Rule 7-11, defendant Logitech
3 Inc., by and through its counsel of record, hereby respectfully moves this Court for
4 administrative relief in the form of a stay of all proceedings in this case pending the resolution
5 of Logitech’s Petition for Writ of Mandamus, filed in the Ninth Circuit on January 25, 2019, case
6 number 19-70248.

7 Counsel for plaintiff has indicated plaintiff takes no position on the relief requested by
8 this motion. Declaration of Dale J. Giali at ¶ 2. No hearing is requested. Accordingly, this
9 administrative motion is ready for consideration and decision by the Court.

10 Good cause exists to grant this motion because: (1) the Petition for Writ of Mandamus
11 raises serious legal questions on which Logitech has a fair prospect of success; (2) Logitech will
12 be “irreparably injured” if the proceedings in this Court are not stayed; (3) plaintiff will not be
13 “substantially injured” by a minor delay in these proceedings; and (4) the “public interest”
14 weighs in favor of a stay—it would promote judicial economy and prevent needless litigation
15 costs.

16 Logitech’s motion is based on this notice of motion and motion, the memorandum of
17 points and authorities that follows, the pleadings, papers, and other documents on file in this
18 action, and such other evidence and argument presented to the Court at or prior to any hearing in
19 this matter.

20 **I. BACKGROUND**

21 The Court is well familiar with the background of this case, which is comprehensively set
22 forth in Logitech’s initial Unopposed Motion for Stay. ECF No. 33. In that motion, Logitech
23 sought a stay of this action while its initial Petition for a Writ of Mandamus was pending in the
24 Ninth Circuit. Subsequent to the filing of that motion, a motions panel of the Court denied
25 Logitech’s initial petition without prejudice, on the ground that “[i]t does not appear that the
26 parties have raised the constitutional questions presented in this petition to the district court.”
27 Order at 1, *Logitech, Inc. v. U.S. Dist. Court for the N. Dist. of Cal.*, No. 18-72732 (9th Cir. Dec.

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1 24, 2018), ECF No. 5. This Court denied Logitech’s motion to stay as moot, “without prejudice
2 to a fresh motion as contemplated by the court of appeals.” ECF No. 35. Logitech filed a motion
3 for leave to seek reconsideration on the same issues as were raised in its Petition for a Writ of
4 Mandamus, along with a motion to stay the case pending that motion, which the Court
5 subsequently denied. ECF Nos. 38, 40. Now Logitech has filed a Renewed Petition for a Writ of
6 Mandamus, captioned *Logitech Inc. v. U.S. Dist. Ct. for the N. Dist. of Cal.*, No. 19-70248 (9th
7 Cir. Jan. 25, 2019).

8 **II. ARGUMENT**

9 This Court has “the power to stay proceedings incidental to the power inherent in every
10 court to control the disposition of the causes on its docket with economy of time and effort for
11 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

12 Moreover, this Court is well familiar with the four-factor test to determine whether a stay
13 is proper pending resolution of a petition for writ of mandate. The factors to be considered are
14 whether: (1) the petition raises serious legal questions on which Logitech has a likelihood of
15 success; (2) Logitech will be “irreparably injured” if the proceedings are not stayed; (3) plaintiff
16 will be “substantially injured” by a minor delay in these proceedings; and (4) the “public
17 interest” weighs in favor of a stay, i.e., if it would promote judicial economy and prevent
18 needless litigation costs. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011); *see also Lair*
19 *v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 434
20 (2009). “In weighing these factors, the Ninth Circuit has applied a ‘sliding scale’ approach
21 whereby the factors are balanced ‘so that a stronger showing of one . . . may offset a weaker
22 showing of another.’” *Jimenez v. Menzies Aviation Inc.*, 2015 WL 5591722, at *2 (N.D. Cal.
23 Sept. 23, 2015) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir.2011)); *accord, e.g.,*
24 *Ward*, 2014 WL 7273911.

25 **A. The Petition Raises Serious Legal Questions And/Or Has A Fair Prospect Of** 26 **Success**

27 As stated in its prior motion to stay, Logitech respectfully contends that it is likely to
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1 succeed on the merits, or to show that it has a substantial case for relief on the merits. *See Leiva-*
2 *Perez*, 640 F. 3d at 966. “[T]he Ninth Circuit has recognized that this showing is satisfied by a
3 showing of ‘reasonable probability’ or ‘fair prospect;’ ‘a substantial case on the merits;’ or that
4 ‘serious legal questions are raised.’” *Gray v. Golden Gate Nat. Recreational Area*, 2011 WL
5 6934433, at *1 (N.D. Cal. Dec. 29, 2011).

6 Because of the Court’s careful consideration of these issues in its Order Denying Motion
7 for Leave to File Motion for Reconsideration And Stay Action (ECF No. 40), Logitech will not
8 belabor its arguments, but respectfully submits that there is at least a “fair prospect” that the
9 Ninth Circuit will grant review and resolve these questions in its favor. And, at minimum, these
10 are “serious legal questions” that would benefit from appellate guidance before the parties
11 continue with costly discovery and class certification briefing that will cost many hundreds of
12 thousands of dollars. It contends that this is the case for the following reasons:

13 • Logitech respectfully contends that the Court’s order constitutes an
14 impermissible, content-based speech regulation, and that such a restriction on settlement talks is
15 not the “least restrictive means to further [that] interest,” as it must be in order to satisfy strict
16 scrutiny. *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). *See* ECF No. 33 at pp.
17 3-4.

18 • Logitech respectfully states that the Ninth Circuit is likely to view the order as
19 violating the First Amendment’s Petition Clause. By forbidding the parties from submitting a
20 proposed settlement agreement, the Ninth Circuit is likely to find that such a bar is unjustified,
21 particularly given the procedural safeguards inherent in Fed. R. Civ. P. 23. *See* ECF No. 33 at p.
22 4.

23 • Logitech respectfully submits that the Ninth Circuit is likely to find that the order is
24 in conflict with the “‘strong judicial policy that favors settlements, particularly where complex
25 class action litigation is concerned.’” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
26 2008). *See* ECF No. 33 at pp. 4-5.

27 • Logitech respectfully notes that the Ninth Circuit is likely to issue a writ of
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1 mandamus for several reasons, including that Logitech has no other means of obtaining relief,
2 Logitech will be harmed by the order in a way that is not correctable on appeal because it will
3 incur hundreds of thousands of dollars in legal costs litigation this case through a class
4 certification motion, the standing order is oft-issued, and the issue presented is new and
5 important. *See* ECF No. 33 at p. 5.

6 Thus, Logitech contends that it has shown that there is a fair prospect that the Ninth
7 Circuit will grant its petition, and rule in its favor. And, at a minimum, Logitech has
8 demonstrated that there are serious questions going to the merits that militate in favor of issuing
9 a stay. *Morgan Tire of Sacramento, Inc.*, 2015 WL 3623369, at *2 (finding that plaintiff had
10 pointed out sufficiently serious questions to warrant a stay)

11 **B. Logitech Will Suffer Irreparable Injury Absent A Stay**

12 Logitech will suffer irreparable injury in the absence of a stay. If Logitech is “forced to
13 incur the expense of litigation before [its] appeal is heard, the appeal will be moot, and
14 [Logitech’s] right to appeal will be meaningless.” *Gray*, 2011 WL 6934433 at *3; *Brown v. Wal-*
15 *Mart Stores, Inc.*, 2012 WL 5818300, at *4 (N.D. Cal. Nov. 15, 2012) (“Forcing Defendant to
16 incur potentially substantial fees . . . that may ultimately be unnecessary constitutes at least some
17 harm to Defendant.”). Specifically, absent a stay, discovery pertaining to class certification
18 remains ongoing, and the Court has recently extended the time for plaintiff to file a motion for
19 class certification to provide the parties additional time to engage in discovery, take depositions,
20 and produce documents – all of which are costly, and the costs of which cannot be recovered.

21 **C. Plaintiffs Will Not Suffer Injury From A Stay**

22 A simple delay in proceedings does not constitute a substantial injury to plaintiffs. *See*,
23 *e.g.*, *Brown*, 2012 WL 5818300, at * 4 (“The potential delay in Plaintiff’s ability to recover
24 penalties . . . does not constitute a substantial injury.”). Plaintiff will suffer injury if this case
25 continues because both parties have expressed a desire to engage in settlement negotiations and
26 to settle this case, but instead of doing so, plaintiff will be forced to incur the costs of proceeding
27 with this case.

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D. The Public Interest Favors A Stay

A stay would be in the public’s interest for all of the reasons discussed above. If this case proceeds in this Court while the Ninth Circuit decides whether to issue a writ, judicial resources will be expended on resolving discovery disputes, analyzing the briefing submitted in this case, and hearing the parties’ argument at the class certification hearing. If the Ninth Circuit then determines that the parties should be permitted to submit a settlement proposal prior to class certification, these judicial resources will have been expended without reason. The public interest favors a stay where, as here, in the absence of a stay, “judicial resources may be misspent.” *Morgan Tire of Sacramento, Inc.*, 2015 WL 3623369, at *2.

III. CONCLUSION

Logitech respectfully requests that its motion to stay the case pending resolution of its renewed petition for writ of mandamus be granted.

Dated: January 25, 2019

MAYER BROWN LLP
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Keri E. Borders
Rebecca B. Johns

By: /s/ Dale J. Giali
Dale J. Giali

Attorneys for Defendant Logitech, Inc.