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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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14 Jose Parra; Gonzalo Estrada;)
and Aurelia Martinez)

15)
Plaintiffs,)

No. CIV-02-0591-PHX-RCB

16)
vs.)

O R D E R

17)
Bashas', Inc.)

18)
Defendant.)

19)

20 Currently pending before the court is plaintiffs' "Request to
21 Set Status Conference[.]" Doc. 269. Also pending before the court
22 is defendant Bashas', Inc. "Motion to Stay Proceedings Pending
23 Petition for Writ of Certiorari or, in the Alternative, Motion to
24 Extend Time to Respond to Plaintiffs' Request to Set Status
25 Conference[.]" Doc. 270.

26 **Background**

27 In Parra v. Bashas', Inc., 536 F.3d 975 (9th Cir. 2008)
28 ("Parra II"), the Ninth Circuit reversed and remanded this court's

1 class certification order, Parra v. Bashas', Inc., 2005 WL 6182338
2 (D.Ariz. Aug. 29, 2005) ("Parra I"), as it pertained to plaintiffs'
3 discriminatory pay claim. On September 12, 2008, the Ninth Circuit
4 denied the petition for panel rehearing and the petition for
5 rehearing *en banc*. Doc. 267-2. The Ninth Circuit's mandate
6 issued on September 25, 2008 (doc. 267), thereby restoring
7 jurisdiction to this court. See Sgaraqlino v. State Farm Fire and
8 Cas. Co., 896 F.2d 420, 421 (9th Cir. 1990) (defining the "issuance
9 of the mandate" as "return[ing] [the case] to the district court's
10 jurisdiction[)").

11 Two months later, plaintiffs filed a request for a status
12 conference "in order to reopen discovery" and to have this court
13 "set a briefing schedule for plaintiffs' motion for class
14 certification of their Equal Pay Claim." Request (doc. 269) at
15 2:1-3. Given that discovery has been closed since April 2004,
16 plaintiffs purportedly "need to obtain updated discovery concerning
17 the status of defendant's pay policy and its impact on the putative
18 class." Id. at 2:12-13. After the completion of such discovery,
19 plaintiffs intend to "file an updated motion for certification of
20 the equal pay claim." Id. at 2:10.

21 On December 1, 2008, in anticipation of filing a petition for
22 certiorari, Bashas' filed their motion for a stay pending the
23 United States' Supreme Court's disposition of that petition.
24 Alternatively, Bashas' contends that this court "should at least
25 grant a stay of all proceedings regarding plaintiffs' pay claim,
26 and, if necessary, grant Bashas' an extension of time to respond to
27 Plaintiffs' request for a status conference, with Bashas' response
28 due ten . . . days after this Court enters its order regarding

1 [this] motion." Reply (doc. 272) at 7:10-13. In the meantime, on
2 December 11, 2008, Bashas' did file its Petition of a Writ of
3 Certiorari (No. 08-768).

4 Discussion

5 I. Stay

6 Having considered the parties' respective arguments as to the
7 necessity of a stay pending the Supreme Court's resolution of
8 Bashas' petition for certiorari, the court hereby DENIES, without
9 prejudice to renew, Bashas' motion for a stay. Given the manner in
10 which this litigation will be proceeding for the foreseeable
11 future, the court finds that Bashas' has not met its burden of
12 showing the necessity for a stay at this juncture.

13 II. Extension of Time

14 Given the denial of Bashas' stay motion, the court hereby
15 GRANTS Bashas' motion for alternative relief. More specifically,
16 Bashas' has until January 13, 2009, by which to file and serve its
17 response to plaintiffs' "Motion to Set Status Conference" (doc.
18 269). Plaintiffs' reply, if any, shall be filed and served in
19 accordance with LRCiv 7.2(d).

20 III. Status Conference


21 The court hereby conditionally GRANTS plaintiffs' "Request to
22 Set Status Conference" (doc. 269). Such Status Conference shall be
23 held, if at all, on February 2, 2009, at 2:30 p.m., at the District
24 Court of the United States for the District of Arizona, Sandra Day
25 O'Connor Courthouse, 401 West Washington Street, Phoenix, Arizona,
26 6th Floor, Courtroom 606. This stay is subject to being vacated,
27 however, in the event the court ultimately determines that a status
28 conference at that point is unnecessary.

1 IT IS ORDERED that:

2 (1) Plaintiffs' "Request to Set Status Conference" (doc. 269)
3 is GRANTED in accordance with the terms set forth in the preceding
4 paragraph; and

5 (2) Defendant's motion (doc. 270) is DENIED without prejudice
6 to renew insofar as it is seeking a stay, but is GRANTED, as set
7 forth above, to the extent defendant is seeking an extension of
8 time in which to respond to plaintiffs' "Request to Set Status
9 Conference[.]"

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11 DATED this 31st day of December, 2008.

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14 _____
15 Robert C. Broomfield
16 Senior United States District Judge

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16 Copies to counsel of record