

1 *E-FILED: July 11, 2013*

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5 NOT FOR CITATION
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9 CANTON BECKER, JOSEPHINE
10 ASPLUND, and DARRIN WESLEY,
11 individually and on behalf of all others
12 similarly situated,

No. C12-06477 EJD (HRL)

**ORDER ON DISCOVERY DISPUTE
JOINT REPORT #1**

11 Plaintiffs,

[Dkt. 37]

12 v.

13 SKYPE INC. ET AL.,

14 Defendants.
15 _____/

16 In this putative class action, plaintiffs Becker, Asplund, and Wesley sue Skype and its
17 reputed owner, Microsoft, over alleged billing irregularities. They allege they were users of certain
18 Skype services and products providing internet-based calls and that their accounts were converted,
19 without their knowledge or authorization, from non-recurring (meaning their service terminated at
20 the end of the period they had paid for, unless they renewed) to automatic renewal (meaning service
21 renewed for another billing period unless they affirmatively canceled).

22 The case is still in the pleading stage. Defendants' motion to dismiss claims for relief 2, 5,
23 and 6 is under submission. Their motion to dismiss Becker on the basis he is not a proper class
24 representative is set for hearing in October.

25 This discovery dispute is over whether all discovery should be stayed until we see whether
26 any of the plaintiff's claims survive all pending or subsequently filed motions to dismiss.

27 Over three months ago plaintiffs served interrogatories, requests for production of
28 documents, requests for admissions, and FRCP 30(b)(6) notices of deposition. Most of the
discovery sought is what this court would view as baseline, pretty basic stuff. What is the

1 relationship between the defendants? Tell us all about the billing change in 2012 converting non-
2 recurring charges to automatic renewal. What contacts were there between the defendants and the
3 plaintiffs? When and how were plaintiffs notified about the billing change, and how did they
4 signify their approval?

5 Defendants responded to the discovery requests with a veritable blizzard of objections on
6 every conceivable basis. It seemed that every single discovery request was vague, ambiguous,
7 overbroad, burdensome, not calculated to lead to admissible evidence, and so on.¹ Where plaintiffs
8 offered a definition of a recurring term, defendants objected to the definition. Where plaintiffs did
9 not provide a definition of seemingly straightforward words (such as “policies” or “billings”)
10 defendants objected to the absence of definitions. Defendants did not answer any of the
11 interrogatories or requests for admission. On a very few of the requests for production they said
12 they would produce some documents sometime, but not now. They planned to wait until the court
13 rules on “pending and potential motions to dismiss.”

14 Up until now the defendants have had a *de facto* stay on discovery by virtue of objecting to
15 everything and producing nothing. Now, the defendants want this court to officially stay discovery.
16 This the court will not do. Even if claims for relief 2, 5, and 6 are dismissed without leave (no sure
17 thing), that would still leave claims 1, 3, and 4. Even if Becker is found unsuitable as a class
18 representative, there is not as yet any direct challenge to the suitability of Asplund or Wesley. At
19 this point, it appears that this case may get past the pleading stage. And, as noted above, with a few
20 exceptions, the discovery propounded by plaintiffs does not appear to be reaching too far or too
21 deep under the circumstances.

22 In short, defendants’ request for a stay of discovery is denied, and the court specifically
23 overrules their objection to producing/answering/appearing on the basis that motions to dismiss are
24 pending or contemplated.

25 Furthermore, the court cautions defendants and their counsel to dial back on the fog of words
26 that characterizes their discovery responses to date and to start producing information.

27 ¹ For example, Microsoft’s General Objections and Objections to Specific Definitions, which was
28 responding to plaintiffs’ 30(b)(6) deposition notice and associated document production requests,
runs more than eleven pages. It is followed by almost 20 more pages of Specific Objections to the
deposition topics and document requests.

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SO ORDERED.

Dated: July 11, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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