

MAR 18 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AIMEE D. PHILLIPS; ROBERT ALLEN;
SHERI ALLEN; SALVADOR ANGEL;
TROY BERNHARDT; DAVID BUCK;
DARLENE BUCK; VICTORIA
CASTNER; MANUEL CASTRO;
LILIANA COMBS, CRISTY
MATCHETT, fna Cristy Davis; ERICKA
DORAN; ROGER FRANCK; THERESA
A. JENSEN; HEATHER KREHBIEL;
JON MARSHALL; HEATHER
MARSHALL; PAUL MUNDY; MARK
A. NELSON; JIMMIE ROBERTS;
LINDA ROBERTS; VALERIE
SAKRAIDA; JEFFREY SAKRAIDA;
JOSEFINA SAMANO; FRED
SCHNAIBLE; DEBBIE SCHNAIBLE;
SHAWN SCHUBERT; KENNETH R.
SMITH; J. ANNETTE STRAIN;
MARVIN STRAIN; SHERRI L.
STRATTON,

Plaintiffs - Appellees,

v.

LITHIA MOTORS, INC., an Oregon
corporation; LITHIA HPI INC.; LITHIA
MEDFORD HON, INC.; LITHIA

No. 07-35670

D.C. No. CV-03-03109-HO

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

MOTORS SUPPORT SERVICES, INC.;
HUTCHINS IMPORTED MOTORS,
INC.; REYNALDO AGUILERA;
WILLIAM JAY BLANCHARD; GREG
COLEMAN; BILL DAVES; SIDNEY B.
DEBOER, KEITH DESCHANE; M. L.
“DICK” HEIMANN; JOHN HOBGING;
DON JONES; STEVE MORRIL; STEVE
PHILIPS; LARRY PIERCE; TIM
STARK; BOB TAYLOR,

Defendants - Appellants.

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Argued and Submitted February 6, 2009
Portland, Oregon

Before: PAEZ and RAWLINSON, Circuit Judges, and COLLINS **, District Judge.

Lithia Motors, Inc., Lithia Support Services, Inc., and certain officers and employees of Lithia Motors, Inc. (collectively Lithia Appellants) appeal the district court’s denial of Lithia Appellants’ motion to compel arbitration.

The district court properly denied Lithia Appellants’ motion to compel arbitration because Lithia Appellants waived their right to compel arbitration through their substantial use of court proceedings and their significant delay in

** The Honorable Raner Collins, U.S. District Judge for the District of Arizona, sitting by designation.

seeking arbitration. *See Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d 754, 759 (9th Cir. 1989), *as amended* (holding that a party waived any right to compel arbitration due to the delayed demand to compel arbitration and active litigation of the matter through, *inter alia*, pleadings and motions practice).

AFFIRMED.