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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TRENT ALVAREZ, on behalf of
himself and all others
similarly situated,

Plaintiff,

v.

T-MOBILE USA, INC., and Does 1
through 10,

Defendant.

NO. CIV. 2:10-2373 WBS GGH

MEMORANDUM AND ORDER RE:
MOTION TO STAY

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Plaintiff Trent Alvarez brought this putative class
action against defendant T-Mobile USA, Inc., arising out of
plaintiff's mobile phone contract with defendant. The Complaint
alleges violations of California's Consumer Legal Remedies Act,
Cal. Civ. Code §§ 1750-1785, Unfair Competition Law, Cal. Bus. &
Prof. Code §§ 17200-17210, and False Advertising Law, Cal. Bus. &
Prof. Code §§ 17500-17595. Presently before the court is
defendant's motion to stay the action pending the Supreme Court's

1 decision in AT & T Mobility LLC v. Concepcion, --- U.S. ----, 130
2 S. Ct. 3322 (2010).

3 Courts have the power to stay proceedings "incidental
4 to the power inherent in every court to control the disposition
5 of the causes on its docket with economy of time and effort for
6 itself, for counsel, and for litigants." Landis v. N. Am. Co.,
7 299 U.S. 248, 254 (1936). This power extends to stays pending
8 other judicial proceedings, and does not require the issues in
9 such proceedings to be necessarily controlling of the action
10 before the court. Leyva v. Certified Grocers of Cal., Ltd., 593
11 F.2d 857, 863-64 (9th Cir. 1979).

12 In determining whether a stay is appropriate pending
13 the resolution of another case, a district court must consider
14 various competing interests, including: (1) the possible damage
15 which may result from the granting of a stay; (2) the hardship to
16 the parties if the suit is allowed to go forward; and (3) the
17 "orderly course of justice measured in terms of the simplifying
18 or complicating of issues, proof, and questions of law which
19 could be expected to result from a stay." CMAX, Inc. v. Hall,
20 300 F.2d 265, 268 (9th Cir. 1962). "A stay should not be granted
21 unless it appears likely the other proceedings will be concluded
22 within a reasonable time in relation to the urgency of the
23 claims." Leyva, 593 F.2d at 864. The party seeking the stay:

24 must make out a clear case of hardship or inequity in
25 being required to go forward, if there is even a fair
26 possibility that the stay for which he prays will work
27 damage to some one else. Only in rare circumstances will
a litigant in one cause be compelled to stand aside while
a litigant in another settles the rule of law that will
define the rights of both.

28 Landis, 299 U.S. at 255. These considerations are "counsels of

1 moderation rather than limitations upon power." Id.

2 Taking the factors in reverse order, the court first
3 considers what effect a stay would have on the "orderly course of
4 justice." CMAX, 300 F.2d at 268. This case involves a putative
5 class action, and defendant has moved to compel arbitration
6 pursuant to an arbitration agreement between the parties that
7 contains a class action waiver provision.¹ (Docket No. 7.) In
8 Laster v. AT & T Mobility LLC, 584 F.3d 849 (9th Cir. 2009), the
9 Ninth Circuit held that a class action waiver provision in an
10 arbitration agreement is unconscionable and unenforceable under
11 California law. Id. at 852. While this court, not having the
12 benefit of full briefing on the issue, will not comment on the
13 merits of the motion to compel arbitration, it appears likely
14 that Laster would be controlling.

15 The Supreme Court granted certiorari in
16 Laster ("Concepcion" on appeal) to resolve: "Whether the Federal
17 Arbitration Act preempts States from conditioning the enforcement
18 of an arbitration agreement on the availability of particular
19 procedures--here, class-wide arbitration--when those procedures
20 are not necessary to ensure that the parties to the arbitration
21 agreement are able to vindicate their claims." (Def.'s Mem. in
22 Supp. of Mot. to Stay Ex. B.) A ruling in Concepcion would thus
23 be beneficial to the court in hearing this case because it could
24 change or clarify the law regarding the enforceability of
25 arbitration agreements containing class action waiver provisions.

26
27 ¹ If the court does not grant defendant's motion to stay,
28 it is scheduled to hear the motion to compel arbitration on
January 18, 2011. (Docket No. 7.)

1 This factor weighs heavily in favor of granting a stay
2 even if the arbitration agreement at issue in Concepcion was more
3 generous to consumers (and thus more likely to be enforceable)
4 than the agreement in this case. This court will certainly have
5 to consider the factual differences between Concepcion and this
6 case in deciding whether to compel arbitration, but a decision in
7 Concepcion could alter whether arbitration is even a possibility.

8 Defendant will suffer substantial hardship if this
9 action is permitted to go forward, since the point of an
10 arbitration clause is to free contracting parties from the burden
11 of litigation. See Lopez v. Am. Express Bank, FSB, No. CV 09-
12 07335, 2010 WL 3637755, at *4 (C.D. Cal. Sept. 17, 2010).

13 Defendant will incur significant costs relating to fact and
14 expert discovery, motion practice, and trial preparation to
15 defend this action. See Carney v. Verizon Wireless Telecom,
16 Inc., No. 09cv1854, 2010 WL 3058106, at *3 (S.D. Cal. Aug. 2,
17 2010); Kaltwasser v. Cingular Wireless LLC, No. C 07-00411, 2010
18 WL 2557379, at *2 (N.D. Cal. June 21, 2010) (“[T]he nature and
19 extent of discovery permissible in private arbitration is
20 fundamentally different from that allowed in class-action
21 litigation.”).² These costs may be unnecessary if the Supreme
22

23 ² Plaintiff’s reliance on Lockyer v. Mirant Corp., 398
24 F.3d 1098 (9th Cir. 2005), is misplaced. While Lockyer stated in
25 dicta that “being required to defend a suit, without more, does
26 not constitute a ‘clear case of hardship or inequity,’” id. at
27 1112, the case involved the stay of a divestiture action pending
28 resolution of the defendant’s bankruptcy proceeding. The
defendant would have had to defend the suit either during the
pendency of the bankruptcy proceeding or after it ended. Here,
in contrast, defendant might not have to defend the suit at all
if the arbitration agreement is held enforceable in Concepcion.
Defending a suit the party should not have to defend qualifies as

1 Court finds that the Federal Arbitration Act preempts state law
2 from conditioning enforcement of an arbitration clause on the
3 availability of class action, which might require this action to
4 be arbitrated. It would be burdensome for both parties to spend
5 time, energy, and resources on pretrial and discovery issues,
6 only to find those issues moot within less than a year. The
7 public interest in preserving judicial resources also weighs in
8 favor of staying the case.

9 There is, however, a fair possibility that granting the
10 stay will harm plaintiff and similarly situated individuals.
11 Plaintiff seeks not only damages but also injunctive relief
12 against allegedly ongoing unfair acts and practices. (Compl. at
13 30:1-19.) If plaintiff's allegations are true, defendant will
14 continue to unfairly obtain monthly payments from plaintiff
15 during the pendency of the stay.³

16 Nonetheless, the court finds that defendant has met its
17 burden and has shown a clear case of hardship or inequity. It
18 would be unjust for defendant to have to litigate this case and
19 incur related expenses if the parties agreed to an enforceable
20 arbitration agreement. See McArdle v. AT & T Mobility LLC, No. C
21 09-1117, 2010 WL 2867305, at *4 (N.D. Cal. July 20, 2010)
22 ("Because the viability of prosecuting this case as a class

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24 "more" than defending a suit that would exist either way, giving
25 rise to a "clear case of hardship or inequity." See Lopez v. Am.
Express Bank, FSB, No. CV 09-07335, 2010 WL 3637755, at *4 (C.D.
Cal. Sept. 17, 2010).

26 ³ Granting or denying the stay could have little or no
27 effect on plaintiff's harm. Plaintiff's two-year contract began
28 on August 17, 2009, and he is obligated to make monthly payments
under the contract. (Compl. ¶¶ 59, 67.) Even without a stay,
plaintiff's case might not be resolved before August of 2011.

1 action is in question, it is not apparent that Defendants should
2 bear this additional expense."). In addition, plaintiff's
3 ongoing harm, though serious, may be remedied by an award of
4 damages. See Carney, 2010 WL 3058106, at *3.

5 Several other California district courts have stayed
6 similar actions pending the Supreme Court's decision in
7 Concepcion. See, e.g., Lopez, 2010 WL 3637755, at *4; Carney,
8 2010 WL 3058106, at *3; McArdle, 2010 WL 2867305, at *4; cf.
9 Kaltwasser, 2010 WL 2557379, at *3 (deferring ruling on motion
10 for class certification until the Supreme Court rules in
11 Concepcion).

12 The Supreme Court heard oral argument in Concepcion on
13 November 9, 2010, and will decide the matter no later than at the
14 end of the 2010 term. The stay of action will thus conclude
15 within a reasonable period of time.

16 IT IS THEREFORE ORDERED that defendant's motion to stay
17 the action pending the Supreme Court's decision in AT & T
18 Mobility LLC v. Concepcion, --- U.S. ----, 130 S. Ct. 3322 (2010)
19 be, and the same hereby is, GRANTED. As soon as that case has
20 been decided by the Supreme Court, counsel shall advise the Clerk
21 and shall take the necessary steps to have this matter set down
22 for Status Conference.

23 DATED: December 6, 2010

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25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE
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