

1 MAYER BROWN LLP  
JOHN NADOLENCO (SBN 181128)  
2 jnadolenco@mayerbrown.com  
LISA W CORNEHL (SBN 232733)  
3 lcornehl@mayerbrown.com  
350 South Grand Avenue  
4 25th Floor  
Los Angeles, CA 90071-1503  
5 Telephone: (213) 229-9500  
Facsimile: (213) 625-0248

7 MAYER BROWN LLP  
DONALD M. FALK (SBN150256)  
8 dfalk@mayerbrown.com  
Two Palo Alto Square, Suite 300  
9 3000 El Camino Real  
Palo Alto, CA 94306-2112  
10 Telephone: (650) 331-2000  
Facsimile: (650) 331-2060

11 Attorneys for Defendant  
12 AT&T Mobility LLC

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

17 PATRICK HENDRICKS, on behalf of himself  
and all others similarly situated,

18 Plaintiff,

19 v.

20 AT&T Mobility LLC,

21 Defendant.

Case No. C11-00409 EMC

22 **DEFENDANT AT&T MOBILITY LLC'S  
UNOPPOSED MOTION TO STAY**

23 Date: April 8, 2011  
24 Time: 10:00 a.m.  
25 Courtroom 8

26 Honorable Charles R. Breyer

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on April 8, 2011, at 10:00 a.m., defendant AT&T Mobility LLC (“ATTM”) will move and hereby does move this Court for an order temporarily staying all proceedings in this action, except for Plaintiff’s Motion to Appoint Co-Lead Interim Class Counsel, which is set for hearing on March 25, 2011. Plaintiff Patrick Hendricks does not oppose this motion.

ATTM intends to respond to Hendricks’ complaint by moving to compel arbitration in accordance with the arbitration provision in Hendricks’ ATTM wireless service agreement. ATTM brings this motion on the ground that a temporary stay of this action pending the U.S. Supreme Court’s resolution of *AT&T Mobility LLC v. Concepcion*—which involves whether the Federal Arbitration Act requires the enforcement of ATTM’s arbitration provision—will conserve the Court’s and the parties’ resources. The motion is supported by the Memorandum of Points and Authorities, the Declaration of Lisa W. Cornehl, and any further briefing or oral argument that ATTM may present at the hearing.

**STATEMENT OF ISSUE TO BE DECIDED**

Whether a temporary stay of proceedings is appropriate.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ATTM moves for a temporary stay of all proceedings in this action with a single  
3 exception: The parties have agreed that briefing and hearing on plaintiff Patrick Hendricks’s  
4 motion to appoint interim class counsel, currently set for hearing on March 25, 2011, may  
5 proceed notwithstanding the stay. With that condition, Hendricks does not oppose this motion  
6 for a stay. Declaration of Lisa W. Cornehl (Cornehl Decl.) ¶ 3.

7 Hendricks filed his putative class-action lawsuit in this Court on January 27, 2011.  
8 ATTM was served with the summons and complaint on February 8, 2011. ATTM’s response to  
9 the complaint is due on March 1, 2011. ATTM intends to move to compel arbitration of  
10 Hendricks’s claims, or, in the alternative, stay the case pending the ruling by the United States  
11 Supreme Court in *AT&T Mobility LLC v. Concepcion*, No. 09-893 (*see* 130 S.Ct. 3322 (2010)).

12 In *Concepcion*, the Supreme Court is expected to decide “[w]hether the Federal  
13 Arbitration Act (FAA), 9 U.S.C. §§ 1-16, preempts applying California’s unconscionability law  
14 to invalidate ATTM’s arbitration agreement. If the Supreme Court holds that California law is  
15 preempted, then in ATTM’s view, this Court will be required to enforce the arbitration  
16 agreement. But, if the Supreme Court holds in *Concepcion* that California law is not pre-empted,  
17 then this Court will be obliged to deny ATTM’s motion to compel arbitration of a California  
18 customer’s claims. The Supreme Court heard oral argument in *Concepcion* on November 9,  
19 2010 and is expected to issue its ruling by the end of this term (i.e., by June 2011).

20 Under these circumstances, the parties agree that ATTM’s obligation to respond to the  
21 complaint—*i.e.*, by moving to compel arbitration—should be deferred until *Concepcion* is  
22 decided. Here, a stay of this action pending the outcome of *Concepcion* is appropriate and will  
23 conserve the Court’s and the parties’ resources. The parties have agreed to keep Hendricks’  
24 motion to appoint interim class counsel, set for hearing on March 25, 2011, on-calendar, but  
25 otherwise agree that a stay should be enforced for all other proceedings. Cornehl Decl. ¶ 3.  
26 More specifically, the parties agree, and ATTM therefore requests, that this Court issue an order  
27 providing that (1) ATTM’s obligation to respond to the complaint and all further proceedings in  
28 this action—except for Hendricks’ motion to appoint interim class counsel—be stayed pending

1 the United States Supreme Court's resolution of *Concepcion*, (2) the parties stipulate that  
2 ATTM's right to compel arbitration will not be waived by opposing the motion to appoint  
3 interim class counsel and/or appearing at any hearing on that motion, and (3) the parties must file  
4 a joint status report within 14 days of the issuance of the final decision of the Supreme Court.

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6 Dated: March 1, 2011

MAYER BROWN LLP  
JOHN NADOLENCO  
LISA W. CORNEHL

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9 By: s/ Lisa W. Cornehl  
10 Lisa W. Cornehl  
11 Attorneys for Defendant  
AT&T Mobility LLC

12 Of Counsel:  
13 Archis A. Parasharami  
14 Theodore J. Weiman  
MAYER BROWN LLP  
15 1999 K Street, N.W.  
Washington, D.C. 20006-1101  
16 Telephone: (202) 263-3000  
Facsimile: (202) 263-3300  
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1 **CERTIFICATE OF SERVICE**

2 I am employed in Los Angeles County, California. I am over the age of eighteen years  
3 and not a party to the within-entitled action. My business address is 350 South Grand Avenue,  
4 25th Floor, Los Angeles, California 90071-1503. On March 1, 2011, the following documents  
5 were served electronically via the CM/ECF system:

6 **DEFENDANT AT&T MOBILITY LLC'S UNOPPOSED MOTION TO STAY**

7 I further certify that I mailed the foregoing document in a sealed envelope with postage  
8 thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth  
9 below:

10 Aaron P. Davis  
11 Barry L. Davis  
12 Daniel R. Lever  
13 THORNTON DAVIS & FEIN, P.A.  
14 80 SW Eighth Street  
15 Miami, FL 33130  
16 Telephone: (305) 446-2646

17 I am readily familiar with the firm's practice of collection and processing correspondence  
18 for mailing. Under that practice the envelopes would be deposited with the U.S. Postal Service  
19 on that same day with postage thereon fully prepaid in the ordinary course of business. I am  
20 aware that on motion of the party served, service is presumed invalid if postal cancellation date  
21 or postage meter date is more than one day after date of deposit for mailing in affidavit.

22 I declare that I am employed in the office of a member of the bar of this court at whose  
23 direction the service was made.

24 I declare under penalty of perjury under the laws of the State of California that the above  
25 is true and correct.

26 Executed on March 1, 2011, at Los Angeles, California.

27   
28 Simoné Hernandez