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 10 Attorneys for Defendant  
 AT&T Mobility LLC

11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

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 16 PATRICK HENDRICKS, on behalf of himself  
 and all others similarly situated,  
 17  
 Plaintiff,  
 18  
 vs.  
 19 AT&T MOBILITY, LLC,  
 20  
 Defendant.  
 21

Case No. CV 11-00409-CRB

**SUPPLEMENTAL DECLARATION OF  
 JAN MENDEL IN SUPPORT OF  
 DEFENDANT AT&T MOBILITY LLC'S  
 MOTION TO COMPEL ARBITRATION  
 AND STAY CASE**

Date: October 21, 2011  
 Time: 10:00 a.m.  
 Courtroom 8

Honorable Charles R. Breyer

1 I, Jan Mendel, hereby declare as follows:

2 1. The following facts are of my own personal knowledge, and if called as a witness  
3 I could and would testify competently as to their truth.

4 2. I submitted a declaration in this case to respond to plaintiff Patrick Hendricks's  
5 contention that AT&T Mobility LLC ("ATTM") routinely prevents consumers from pursuing  
6 arbitration by refusing to pay the American Arbitration Association ("AAA") for a consumer's  
7 filing fee or other arbitration costs when required to do so by the arbitration provision in the  
8 consumer's wireless service agreement.

9 3. In my earlier declaration, I explained that I am the Lead Discovery Manager with  
10 the AT&T Mobility LLC ("ATTM") Legal Department and am involved with the resolution of  
11 customer disputes under ATTM's arbitration provision. I also explained that, since ATTM  
12 committed itself to paying its customers' share of arbitration costs in qualifying cases in mid-  
13 2003, ATTM had never prevented a customer from obtaining relief via the arbitration process by  
14 refusing to pay those costs, with the sole exception of the arbitration demands recently submitted  
15 by the law firm of Bursor & Fisher, P.A. seeking to enjoin the proposed AT&T/T-Mobile  
16 merger.

17 4. I have read Mr. Hendricks's objection to my declaration, which asserts that I have  
18 not sufficiently explained how it is that I have personal knowledge of the facts in my declaration.  
19 I am submitting this supplemental declaration to respond to that objection.

20 5. To begin with, I have personal knowledge of ATTM's arbitrations with  
21 consumers because, since I joined the Litigation Group in the summer of 2004, after having been  
22 hired by the Legal Department in August 2003, I have been tracking every such arbitration.  
23 Although my title has changed over time, I have been involved with the ATTM consumer  
24 arbitration program since joining the Litigation Group.

25 6. ATTM was previously known as Cingular Wireless LLC ("Cingular"). One of  
26 my first tasks when I joined the Litigation Group of the Legal Department was to track the then-  
27 pending consumer arbitrations brought under the then-current Cingular arbitration provision  
28 (which had been implemented in July 2003). And I have continued to track those arbitrations.

1 Since late 2006, I have also been the designated person at ATTM to receive service of consumer  
2 demands for arbitration and to handle communications with the AAA about the arbitration  
3 program, including communications about billings for ATTM consumer arbitrations.

4 7. In addition, I maintain or have access to records of ATTM's arbitrations with  
5 consumers from mid-2003 to the present, including records of payments to the AAA and  
6 invoices from the AAA. According to those records, every invoice from the AAA during the  
7 relevant time period, with no exception of which I am aware or that I could find, was paid.

8 8. Given my role in ATTM's consumer arbitration program, I would have been  
9 aware of any attempt by ATTM since I joined the Litigation Group to prevent an arbitration from  
10 being administered by the AAA by deliberately refusing to pay the costs of that arbitration. For  
11 example, I would be aware if the AAA had terminated ATTM's consumer arbitration program; I  
12 have been informed by the AAA that if a business were to fail to pay arbitration costs that the  
13 AAA concludes that the business owes, the AAA will refuse to administer any arbitrations for  
14 that business.

15 9. In addition, it is my understanding that the AAA agrees that—with the sole  
16 exception of the recent arbitrations challenging the AT&T/T-Mobile merger filed by the Bursor  
17 & Fisher, P.A. law firm—ATTM consistently pays the costs of consumer arbitration. Attached  
18 as Exhibit 1 is a true and correct copy of a letter, which I retrieved from ATTM's files, from Eric  
19 Tuchmann, the AAA's General Counsel, to a lawyer representing an ATTM customer who had  
20 brought an arbitration under ATTM's consumer arbitration provision. In the letter, Mr.  
21 Tuchmann explained that the AAA had selected ATTM (among other companies) for a pilot  
22 program under which consumer cases would be accepted for administration even before the  
23 business had paid the fees because those companies had "historically complied" with their  
24 obligation under the AAA's Consumer Due Process Protocol to pay those fees.

25 10. Finally, in my earlier declaration, I had noted that ATTM had paid the costs of  
26 arbitration even when the consumer had breached the arbitration provision by first filing a  
27 lawsuit in a court before initiating arbitration. I have personal knowledge of that fact because I  
28 also track consumer lawsuits against ATTM, including at least one that led to a consumer

1 arbitration. For example, after one customer breached her consumer arbitration agreement by  
2 filing a class action, the court compelled arbitration, and ATTM paid the costs of that arbitration.  
3 Attached as Exhibit 2 is a true and correct copy of the court order compelling arbitration in  
4 *Davidson v. Cingular Wireless LLC*, No. 2:06-cv-00133-WRW, 2007 WL 896349 (E.D. Ark.  
5 Mar. 23, 2007). Attached as Exhibit 3 is a true and correct copy of a letter from the AAA  
6 confirming the filing of the customer's demand for arbitration and requesting that ATTM pay the  
7 arbitration costs. Attached as Exhibits 4 and 5 are true and correct copies (with some  
8 information redacted) of a fax to the AAA confirming a credit card payment of that invoice, as  
9 well as a check to the customer's attorney for the cost of the AAA filing fee. And attached as  
10 Exhibit 6 is a true and correct copy of the arbitrator's award, which confirms on page 4 that the  
11 administrative filing and case service fees and the arbitrator's fees and expenses "shall be borne  
12 as incurred."

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
October 19, 2011, at Atlanta, Georgia

  
Jan Mendel