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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **OAKLAND DIVISION**

15 ZOLTAN STIENER and YNEZ STIENER,
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 Plaintiffs,
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 v.
 18 APPLE COMPUTER, INC., AT&T MOBILITY,
 19 LLC, and DOES 1 through 50, inclusive,
 20
 Defendants.

Case No.: C 07-04486 SBA
 [PROPOSED] ORDER

21 Before the Court is defendant AT&T Mobility LLC’s (“ATTM”) motion to stay these
 22 proceedings pending resolution of ATTM’s appeal of this Court’s denial of ATTM’s motion to
 23 compel arbitration. For the reasons that follow, the motion for a stay pending appeal is
 24 GRANTED.

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1 **Background**

2 In June 2007, plaintiffs Zoltan and Ynez Stienner purchased two iPhones. In August 2007,
3 the Stieners filed this putative class action against Apple Computer, Inc (“Apple”) and ATTM.
4 See Docket No. 1. They allege that defendants violated California consumer-protection statutes
5 and a variety of common-law doctrines by “failing to inform a nationwide group of initial
6 purchasers of the iPhone cellular telephone that fees of over \$100 would be required to replace
7 the iPhone battery and maintain service while the battery was being replaced.” Docket No. 1
8 (Compl. ¶1). The plaintiffs maintain that Apple and ATTM failed to disclose adequately the
9 details of the iPhone battery-replacement program, thus violating California’s Unfair Competition
10 Law, CAL. BUS. & PROF. CODE §§ 17200 *et seq.* (Compl. ¶¶58-59), and breaching an implied
11 warranty of merchantability, CAL. COMM. CODE § 2314 (Compl. ¶¶49-52). Plaintiffs also allege
12 breach of contract (Compl. ¶¶45-48) and fraudulent concealment (Compl. ¶¶53-57). They seek to
13 represent a class consisting of “all individuals or entities who at any time from June 29, 2007 to
14 the date of judgment in this action bought and implemented the iPhone and sustained damages as
15 a result.” Compl. ¶32.

16 To use their iPhones with defendant ATTM’s wireless service, the Stieners were required
17 to activate them online and agree to the Terms of Service, which contain an arbitration provision.

18 On November 21, 2007, ATTM filed a motion to compel arbitration and dismiss the
19 plaintiffs’ claims pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. Docket No.
20 38. On March 12, 2008, this Court denied the motion. Docket No. 59. On March 17, 2008,
21 ATTM filed a notice of appeal from the denial of that motion. Docket No. 60. ATTM now
22 moves to stay the proceedings against it pending the outcome of its appeal.

23 **Legal Standard**

24 The FAA permits an immediate appeal of an order denying a motion to compel
25 arbitration. See 9 U.S.C. § 16(a)(1)(B) (“An appeal may be taken from ... an order ... denying a
26 petition ... to order arbitration to proceed”). When a party is appealing from the denial of a motion
27 to compel arbitration, a district court may stay proceedings pending appeal if the appeal presents
28 a “substantial” question. *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1412 (9th Cir. 1990).

1 **Analysis**

2 The Court finds that a stay of proceedings against ATTM is appropriate here.

3 First, ATTM’s appeal presents a substantial question. While the Court does not agree
4 with ATTM’s argument that its new arbitration provision is materially distinguishable from the
5 earlier version that was involved in *Shroyer v. New Cingular Wireless Services, Inc.*, 498 F.3d
6 976 (9th Cir. 2007), it nevertheless agrees that the appeal raises a substantial question for the
7 Ninth Circuit’s consideration.

8 The balance of the equities also tips in favor of granting a stay. ATTM would suffer
9 irreparable harm if litigation against it, including discovery, pre-trial motions, and perhaps even a
10 trial, were to move forward and subsequently the Ninth Circuit or U.S. Supreme Court reverses
11 the Court’s holding. By contrast, plaintiffs’ claims are small, so a delay in having them
12 adjudicated does not threaten plaintiffs with substantial harm.

13 Finally, the public interest supports granting a stay for two reasons. First, there is a strong
14 federal policy favoring arbitration. *Preston v. Ferrer*, 128 S. Ct. 978, 983 (2008). Second,
15 considerations of judicial economy support a stay to preserve the Court’s and parties’ resources.
16 The Court agrees with the other federal district courts in California that have held that it is fully
17 appropriate to stay proceedings rather than requiring the parties to assume the burdens of
18 litigation that may ultimately be for naught if the result of the appeal is to send the dispute
19 between ATTM and plaintiffs to arbitration. *See Winig v. Cingular Wireless LLC*, 2006 WL
20 3201047, at *3 (N.D. Cal. Nov. 6, 2006); *Sasik v. AT & T Wireless Servs., Inc.*, CV 05-2346 ABC
21 (C.D. Cal. Nov. 1, 2006); *Stern v. Cingular Wireless LLC*, 2006 WL 2790243, at *2 (C.D. Cal.
22 Sept. 11, 2006); *Laster v. T-Mobile USA, Inc.*, No. 05-cv-1167-DMS-AJB, at 5 (S.D. Cal. Mar.
23 14, 2006); *Ford v. Verisign, Inc.*, No. 05 CV 0819 JM (RBB), at 3 (S.D. Cal. Mar. 8, 2006);
24 *Cervantes v. Pacific Bell Wireless*, No. 05 CV 01469 JM (RBB), at 3 (S.D. Cal. Mar. 8, 2006).

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Conclusion

ATTM’s motion for a stay of proceedings pending appeal is GRANTED. All proceedings against ATTM are hereby STAYED pending the resolution of ATTM’s appeal.

IT IS SO ORDERED.

Date

Sandra Brown Armstrong
United States District Judge