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13	UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALLEORNIA		
14	NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION		
15	ZOLTAN STIENER and YNEZ STIENER,	Case No.: C 07-04486 SBA	
16	Plaintiffs,	DEFENDANT AT&T MOBILITY LLC'S	
17	v.	MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF ITS ADMINISTRATIVE	
18	APPLE COMPUTER, INC., AT&T MOBILITY,	MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF ITS MOTION	
19	LLC, and DOES 1 through 50, inclusive,	FOR STAY PENDING APPEAL AND ACCOMPANYING REPLY	
20	Defendants.	Date: March 28, 2008	
21		Honorable Saundra B. Armstrong	
22			
23	Pursuant to Civil Local Rule 6-3(d), Defendant AT&T Mobility LLC ("ATTM")		
24	respectfully requests leave to file the accompanying reply in support of ATTM's administrative		
25	motion for an interim stay of these proceedings.		
26			
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28			
	MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF ITS ADMINISTRATIVE MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF ITS MOTION FOR STAY PENDING APPEAL AND ACCOMPANYING REPLY, CASE NO. CV 07-04486 SBA		
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## **REPLY IN SUPPORT OF ADMINISTRATIVE MOTION TO STAY PROCEEDINGS**

In opposing our administrative motion for an interim stay, Plaintiffs chiefly attack the merits of our broader motion for a stay pending appeal. As we will show in our reply brief in support of that motion, they cite the wrong standard for stays pending appeal from orders denying arbitration motions; indeed, they completely ignore *Britton v. Co-Op Banking Group*, 916 F.2d 1405 (9th Cir. 1990), which sets forth the standard in the Ninth Circuit. *See* ATTM Motion For Stay Pending Appeal (Docket No. 63) at 4–5 (discussing *Britton*).

8 Here, we seek leave to make only two brief points regarding the request for an interim
9 stay. First, Plaintiffs identify no harm to them that might result from a short stay in the few
10 weeks necessary to resolve the underlying motion for a stay pending appeal.

11 Second, Plaintiffs assert (at page 4) that a stay should not be granted because their claims 12 against Defendant Apple, Inc. (which are not subject to arbitration) might be litigated on a 13 different track than their claims against ATTM. But Plaintiffs offer no reason to assume that the 14 pace of proceedings against ATTM and Apple could not be harmonized later if ATTM's 15 arbitration agreement were not enforced on appeal. More important, as the Supreme Court has 16 repeatedly explained, the policy of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, 17 favoring arbitration rights outweighs any "fortuitous impact \* \* \* on efficient [judicial] dispute 18 resolution." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985). When a case includes 19 "other persons who are parties to the underlying dispute but not to the arbitration agreement," the 20 FAA "*requires* piecemeal resolution when necessary to give effect to an arbitration agreement." 21 Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 (1983) (emphasis added). 22 Just this week the Supreme Court reiterated that "the inefficiency and difficulty of conducting 23 simultaneous arbitration and federal-court litigation [is] not a good enough reason to defer the 24 arbitration." Hall Street Assocs., L.L.C. v. Mattel, Inc., \_\_ U.S. \_\_, 2008 WL 762537, at \*7 (U.S. 25 Mar. 25, 2008)) (citing Byrd). Because arbitration rights under the FAA must be "rigorously 26 enforce[d] \* \* \*, even if the result is 'piecemeal' litigation'' (Byrd, 470 U.S. at 221), Plaintiffs' 27 argument has no merit.

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1	For the foregoing reasons, this Court should issue a stay of all proceedings related to	
2	ATTM until the Court has resolved ATTM's motion for a stay pending appeal.	
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4		
5	DATED: March 28, 2008	MAYER BROWN LLP
6		By: /s/ Donald M. Falk
7		By: <u>/s/ Donald M. Falk</u> Donald M. Falk
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28		- 3 - PLY IN SUPPORT OF ITS ADMINISTRATIVE MOTION TO STAY SOLUTION OF ITS MOTION FOR STAY PENDING APPEAL AND ACCOMPANYING REPLY, CASE NO. CV 07-04486 SBA