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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN MCARDLE, an individual, on  
behalf of himself, the general public  
and those similarly situated,

Plaintiff,

v.

AT&T MOBILITY LLC; NEW CINGULAR  
WIRELESS PCS LLC; and NEW CINGULAR  
WIRELESS SERVICES, INC.,

Defendants.

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No. C 09-1117 CW

ORDER GRANTING  
DEFENDANTS' MOTION  
FOR LEAVE TO FILE A  
MOTION FOR  
RECONSIDERATION  
(Docket No. 129)

Defendants AT&T Mobility LLC, et al., move for leave to file a motion to reconsider the Court's order denying their motion for a stay pending appeal.<sup>1</sup> A hearing on Plaintiff's motion for class certification is scheduled for June 10, 2010.

Under Civil L.R. 7-9, a party may ask a court to reconsider an interlocutory order if the party can show:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable

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<sup>1</sup> Defendants seek leave to file a motion to reconsider the Court's May 10, 2010 Order, which denied them leave to file a motion to reconsider the Court's order denying a stay pending appeal. The Court therefore understands Defendant's current motion to seek reconsideration of the order denying a stay pending appeal.

1 diligence the party applying for reconsideration did not  
2 know such fact or law at the time of the interlocutory  
order; or

3 (2) The emergence of new material facts or a change of  
4 law occurring after the time of such order; or

5 (3) A manifest failure by the Court to consider material  
6 facts or dispositive legal arguments which were presented  
to the Court before such interlocutory order.

7 On May 24, 2010, the Supreme Court granted certiorari in AT&T  
8 Mobility LLC v. Concepcion. \_\_\_ S. Ct. \_\_\_, 2010 WL 303962 (Mem.).

9 The question presented by the certiorari petition is

10 Whether the Federal Arbitration Act preempts States from  
11 conditioning the enforcement of an arbitration agreement  
12 on the availability of particular procedures -- here,  
class-wide arbitration -- when those procedures are not  
necessary to ensure that the parties to the arbitration  
agreement are able to vindicate their claims.

13 Pet. for a Writ of Certiorari, AT&T Mobility LLC, 2010 WL 304265.

14 In the underlying case, Laster v. AT&T Mobility LLC, the Ninth  
15 Circuit affirmed the district court's denial of AT&T's motion to  
16 compel arbitration. 584 F.3d 849, 859 (9th Cir. 2009). The court  
17 based its decision in large part on Shroyer v. New Cingular  
18 Wireless Services, Inc., which held that California law on  
19 unconscionability could render an arbitration clause unenforceable,  
20 498 F.3d 976, 986-87 (9th Cir. 2007).

21 The Court finds that Defendants make the requisite showing  
22 under Civil L.R. 7-9 and, accordingly, GRANTS their motion for  
23 leave to file a motion to reconsider. (Docket No. 129.)  
24 Defendants' briefing for its current motion and its motion filed on  
25 May 4, 2010 will be considered for its motion to reconsider.  
26 Plaintiff shall file an opposition brief within three days of the  
27 date of this Order. A reply, if any, shall be due three days  
28 thereafter. The motion will be taken under submission on the

1 papers.

2 Defendants shall produce their subscribers' contact  
3 information in accordance with Magistrate Judge Maria-Elena James's  
4 Order of April 16, 2010. (Docket No. 94.) Plaintiff, however,  
5 shall not contact any of Defendants' subscribers based on  
6 information obtained through this discovery. This Order renders  
7 moot Defendants' emergency motion to stay their obligation under  
8 Magistrate Judge James's Order. (Docket No. 132.)

9 The Court VACATES the hearing on Plaintiff's Motion for Class  
10 Certification, scheduled for June 10, 2010.

11 IT IS SO ORDERED.

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13 Dated: May 27, 2010



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CLAUDIA WILKEN  
United States District Judge