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 12 AT&T Mobility LLC

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

17 DAVID MORGENSTEIN, individually and on
 behalf of all others similarly situated,
 18
 Plaintiff,
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 v.
 20 AT&T MOBILITY LLC, a Delaware
 corporation, and DOES 1-50, inclusive,
 21
 Defendants.
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Case No. 09-cv-03173 SBA

**STIPULATION AND ORDER OF
 DISMISSAL WITH PREJUDICE**

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1 Plaintiff David Morgenstein (“Morgenstein”) and Defendant AT&T Mobility LLC
2 (“ATTM”), by and through their counsel of record, hereby stipulate that:

3 1. Morgenstein filed the above-captioned putative class-action against ATTM on
4 June 11, 2009;

5 2. Morgenstein alleges that, on March 20, 2009, he purchased online from Amazon
6 new ATTM wireless service bundled with a new ATTM-compatible Blackberry, and further
7 alleges that, although he did not receive his Blackberry until March 27, 2009, ATTM began
8 charging him for service on March 23, 2009;

9 3. Morgenstein alleges that ATTM did not adequately disclose that it could or would
10 charge customers who ordered new ATTM wireless service bundled with new ATTM-
11 compatible devices online for service before they received their devices, which Plaintiff defines
12 as “en-route charges”;

13 4. On behalf of himself and a putative class of California customers who purchased
14 new ATTM wireless service bundled with new ATTM-compatible devices and paid en-route
15 charges, Morgenstein brought claims for breach of contract, violations of Public Utilities Code
16 section 2890 and Consumer Legal Remedies Act (Civ. Code section 1750 et seq.), unfair
17 competition (Bus. & Prof. Code section 17200 et seq.), false advertising (Bus. & Prof. Code
18 section 17500 et seq.), unjust enrichment, and declaratory judgment;

19 5. ATTM maintains that its disclosures make clear that service charges begin upon
20 activation, disputes that it did not adequately disclose the possibility that customers could or
21 would be charged en-route charges, and disputes that it has any liability to Morgenstein or any
22 putative class member in connection with the matters alleged in the Complaint;

23 6. The parties agree to settle the above-captioned action on an individual basis;

24 7. The parties agree that the insertion of the following provision, or language that
25 has the effect of the following provision, in the Terms of Service in ATTM’s Customer Service
26 Agreements with customers who purchase new ATTM wireless service bundled with new
27 ATTM-compatible devices constitutes an adequate disclosure to customers regarding en-route
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1 charges: “Depending upon a number of factors (including your chosen method of shipment and
2 the timing of shipment), you may be charged for service before you receive your new device;”

3 8. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Morgenstein
4 dismisses his individual claims against ATTM with prejudice; and

5 9. Each party shall bear its own costs and fees

6 IT IS SO STIPULATED.

7
8 Dated: March 30, 2010

Nassiri & Jung LLP

9 By: /s/ Kassra Nassiri
10 Kassra Nassiri

11 Attorneys for Plaintiff David Morgenstein

12 Dated: March 30, 2010

Mayer Brown LLP

13 By: /s/ John Nadolenco
14 John Nadolenco

15 Attorneys for Defendant AT&T Mobility LLC

16 *Filer’s Attestation: Pursuant to General Order No. 45, I, Rena Chng, attest that I obtained*
17 *concurrence in the filing of this document from the signatories.*


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[PROPOSED] ORDER

Plaintiff claims, *inter alia*, that ATTM failed to properly disclose that customers who purchased ATTM service and devices online might be subject to “en-route charges,” as defined above. ATTM maintains that its disclosures are adequate. The parties agree that the following provision added to ATTM’s Terms of Service in its Customer Service Agreements, or language that has the effect of the following provision, constitutes an adequate disclosure about the potential for en-route charges: “Depending upon a number of factors (including chosen method of shipment and shipment timing), you may be charged for service before you receive your new device.” ATTM is ordered to make this change to its Customer Service Agreements within 180 days of entry of this order. Pursuant to stipulation and for good cause shown, Morgenstein’s individual claims against ATTM are dismissed with prejudice.

IT IS SO ORDERED.

Dated: 3/31/10



The Honorable Sandra B. Armstrong
United States District Judge