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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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KENNETH A. THELIAN, individually and on
 12 behalf of all others similarly situated,

Case No. 4:10-cv-03440-CW

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Plaintiff

**STIPULATION FOR STAY OF
 PROCEEDINGS PENDING THE U.S.
 SUPREME COURT'S DECISION IN
 AT&T MOBILITY LLC V. CONCEPCION,
 ORDER**

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vs.

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

Dept: Courtroom 2, 4th Floor
 Judge: Hon. Claudia Wilken

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Defendants.

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STIPULATION FOR STAY OF PROCEEDINGS PENDING THE U.S. SUPREME
 COURT'S DECISION IN *AT&T MOBILITY LLC V. CONCEPCION*; ~~PROPOSED~~ ORDER
 Case No. 4:10-CV-03440-CW

1 Plaintiff Kenneth Thelian and Defendants AT&T Mobility LLC, New Cingular Wireless
2 PCS LLC, and New Cingular Wireless Services, Inc. (collectively, “ATTM”), by and through
3 their respective counsel of record, hereby stipulate as follows:

4 WHEREAS:

5 1. On August 5, 2010, Thelian commenced this action by filing a complaint in this
6 Court. In the complaint, Thelian asserts claims under federal and New York law on behalf of a
7 putative nationwide class of ATTM customers.

8 2. The same day, Thelian filed an administrative motion to relate this case to
9 *McArdle v. AT&T Mobility LLC*, No. CV-09-01117 (CW) (MEJ), indicating that the actions
10 “appear to be related in that they are both class actions brought on behalf of similar classes,
11 including roughly the same time period, name the same defendants, allege similar causes of
12 action based on the same relevant events and allege the same damages.” *Id.* at 1. The Court
13 issued an order relating *McArdle* and *Thelian* on August 24, 2010.

14 3. Since July 20, 2010, the *McArdle* action has been stayed pending the U.S.
15 Supreme Court’s decision in *AT&T Mobility LLC v. Concepcion*, 09-893. See Order Granting
16 Defendants’ Motion for Reconsideration, Denying As Moot Defendants’ Administrative Motion
17 for Leave to Respond and Granting Defendants’ Alternative Motion to Strike, *McArdle v. AT&T*
18 *Mobility LLC*, No. CV-09-01117 (CW) (MEJ) (N.D. Cal. July 20, 2010). This Court had held
19 that McArdle’s arbitration agreement with ATTM is unconscionable under California law
20 because it forbids class arbitration. In *Concepcion*, the Supreme Court likely will resolve
21 whether the Federal Arbitration Act preempts this application of California unconscionability
22 law, which may require the enforcement of McArdle’s arbitration agreement.

23 4. The parties agree that a stay of proceedings pending *Concepcion* also is
24 appropriate in the *Thelian* action. Thelian is an ATTM customer residing in California. Compl.
25 ¶ 2. The enforceability of his agreement to arbitrate disputes with ATTM on an individual basis
26 therefore may also turn on the outcome of *Concepcion*.

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IT IS SO ORDERED. The Case Management Conference set for December 14, 2010, is continued to March 15, 2011 at 2 p.m.

Dated: September 9, 2010



Hon. Claudia Wilken
U.S. District Judge