

1 28 U.S.C. § 1292(b) provides, in pertinent part, that a district judge may certify an order
2 for immediate interlocutory appeal if the judge is “of the opinion” that: (1) the order “involves a
3 controlling question of law”; (2) there is “substantial ground for difference of opinion” as to the
4 resolution of that question; and (3) “an immediate appeal from the order may materially advance
5 the ultimate termination of the litigation[].” See *Kaltwasser v. AT&T Mobility*, 2011 U.S. Dist.
6 LEXIS 133544 (N.D. Cal. Nov. 8, 2011); *In re LDK Solar Sec. Litig.*, 584 F. Supp. 2d 1230, 1258
7 (N.D. Cal. 2008). Such certification should only be granted “in extraordinary cases where
8 decision of an interlocutory appeal might avoid protracted and expensive litigation.” *U.S. Rubber*
9 *Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966). The Court finds the circumstances presented in
10 this case do not overcome the general policy disfavoring piecemeal appeals, and that they do not
11 merit § 1292(b) certification.

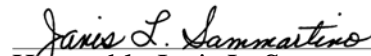
12 In its March 19, 2012 Order compelling arbitration and staying the action, the Court found
13 there was “minimal” procedural unconscionability in the parties’ contractual arbitration
14 agreement, and further found the agreement was not unenforceable. (March 19, 2012 Order 12,
15 18.) Plaintiffs now contend interlocutory appeal is warranted because the “law under the Federal
16 Arbitration Act (‘FAA’) is in flux” following the Supreme Court’s recent decision in *AT&T*
17 *Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1753 (2011), and that “California unconscionability
18 law is also evolving rapidly.” (Mot. for Cert. 2.) However, in its March 19, 2012 Order the Court
19 explicitly declined to address the preemption issues raised by *Concepcion* because such discussion
20 was unnecessary given the Court’s ruling that the arbitration provision was not unconscionable.
21 (March 19, 2012 Order 18.) Thus, Plaintiffs’ arguments that the “law is in flux” because of
22 *Concepcion* and federal preemption is unavailing.

23 Further, it is clear that certifying its March 19, 2012 Order for interlocutory appeal would
24 not “materially advance the ultimate termination of [this] litigation.” 28 U.S.C. § 1292(b).
25 Indeed, such certification would delay, rather than advance, the termination of this case, even
26 under Plaintiffs’ reasoning that the expense of arbitration may force them to abandon the case,
27 because it would “require the parties to undertake proceedings at the appellate level before any
28 arbitration could take place.” *Kaltwasser*, 2011 U.S. Dist LEXIS 133544, at *8 (N.D. Cal. Nov. 8,

1 2011) (citing *Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Trans. Co., Inc.*, 2004 U.S. Dist.
2 LEXIS 30604, at *1 (D. Ariz. July 28, 2004) (declining to certify an order compelling arbitration
3 for interlocutory appeal, in part because “the appeal process would realistically take far longer
4 than would the arbitration process, an interlocutory appellate ruling . . . would only prolong the
5 termination” of the case)). Indeed, the Federal Arbitration Act’s policy of avoiding unnecessary
6 delays in arbitrating disputes is furthered in part through discouragement of immediate appellate
7 review of orders compelling arbitration. *Bushley v. Credit Suisse First Boston*, 360 F.3d 1149,
8 1153 (9th Cir. 2004) (“The Federal Arbitration Act represents Congress’s intent to move the
9 parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.”
10 (internal quotation and citation omitted)). Accordingly, Plaintiffs’ motion for certification of
11 interlocutory appeal is **DENIED**.

12 **IT IS SO ORDERED.**

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14 DATED: May 21, 2012

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16 Honorable Janis L. Sammartino
17 United States District Judge
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