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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<p>JOSE TRUJILLO, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 1:07-cv-04946</p> <p>DECLARATION OF NEAL S. BERINHOUT IN SUPPORT OF AT&T MOBILITY LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS ACTION</p>
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12 I, Neal S. Berinhout, hereby declare as follows:

13 1. I am employed by AT&T Mobility LLC ("ATTM") (formerly Cingular Wireless
14 LLC ("Cingular")) as Associate General Counsel — Litigation. In that position, I have been
15 involved with reviewing the contracts used by ATTM for the provision of wireless services. I
16 am familiar with ATTM's procedures for archiving, retaining, and retrieving true and correct
17 copies of contracts between ATTM and its customers.

18 2. The following facts are of my own personal knowledge, and if called as a witness
19 I could and would testify competently as to their truth.

20 **Corporate Background**

21 3. Cingular Wireless LLC was renamed AT&T Mobility LLC on January 8, 2007.

22 **Service Agreements**

23 4. As a condition of obtaining wireless service from ATTM and activating wireless
24 phones for use with ATTM's network, customers must agree to an ATTM Wireless Service
25 Agreement that sets forth or incorporates by reference the terms and conditions of service.

26 5. In the regular and ordinary course of business, ATTM maintains records that
27 contain information relevant to its customers' accounts.

28 6. At my direction, employees of ATTM have retrieved records relating to the

Declaration of Neal S. Berinhout in Support of AT&T Mobility
LLC's Motion to Compel Arbitration and Dismiss Action

1 account of Plaintiff Jose Trujillo.

2 7. According to ATTM's records, Mr. Trujillo, purchased an iPhone at a retail store
3 and then activated wireless service online using the iTunes program on his iPhone on July 5,
4 2007.

5 8. In the course of purchasing an iPhone from a retail store, customers also receive
6 an iPhone rate plan brochure and a separate document summarizing the activation process,
7 available rate plans, and the return policy. True and correct copies of those documents are
8 attached as Exhibits 1 and 2.

9 9. The ATTM Terms of Service booklet, which contains the terms and conditions of
10 wireless service, is also available in the store and online by going to <http://www.wireless.att.com>
11 and clicking on "Wireless Service Agreement" at the bottom of the web page. A true and correct
12 copy of the Terms of Service in effect at the time that Mr. Trujillo purchased his iPhone is
13 attached as Exhibit 3.

14 10. Customers activate their iPhones for use with ATTM's network online by using
15 the iTunes program. In order to complete the activation process, a customer must check a box
16 that states: "I have read and agree to the AT&T Service Agreement." The service agreement—
17 including the terms of service—is provided in a text box immediately above the box that the
18 customer checks to acknowledge his or her acceptance of the agreement. If the customer does
19 not check the box stating "I have read and agree to the AT&T Service Agreement," the customer
20 is not permitted to activate his or her iPhone for use with ATTM's network. A true and correct
21 copy of screenshots of the iTunes activation process is attached as Exhibit 4.

22 11. After the customer has activated the iPhone, ATTM sends the customer a copy of
23 his or her agreement, which includes the rate plan terms that the customer has selected and
24 incorporates by reference the ATTM Terms of Service booklet then in effect. ATTM includes a
25 copy of the applicable Terms of Service booklet with the agreement; the booklet reproduces the
26 terms of service that the customer accepted when he or she activated the iPhone.
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Arbitration Agreements

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3 12. The arbitration provision in Mr. Trujillo's service agreement was designed to
4 make arbitration as attractive and convenient as possible for ATTM's customers. In creating the
5 provision, ATTM (then Cingular) consulted with several experts, including Professor Richard A.
6 Nagareda, a professor at Vanderbilt University Law School whose scholarship focuses on
7 aggregate dispute resolution.

8 13. The features of ATTM's arbitration provision are explained on ATTM's web site
9 at <http://www.att.com/disputeresolution> and <http://www.att.com/arbitration-information>. The
10 web page at <http://www.att.com/arbitration-information> provides information designed to explain
11 the arbitration process to non-lawyers. True and correct copies of those documents are attached
12 as Exhibits 5 and 6.

13 14. Customers also may download from ATTM's website all of the necessary
14 paperwork for initiating an arbitration. ATTM has prepared a Notice of Dispute form that
15 customers may use to notify ATTM of their intention to commence arbitration as well as a
16 Demand for Arbitration form that customers may fill out and send to the AAA to begin the
17 arbitral process (<http://www.att.com/arbitration-forms>). True and correct copies of those forms
18 are attached as Exhibits 7 and 8.

19 15. ATTM's arbitration provision specifies that any arbitrations will be conducted
20 under the American Arbitration Association ("AAA") Commercial Dispute Resolution
21 Procedures and the Supplementary Procedures for Consumer Related Disputes, as modified by
22 the arbitration provision. True and correct copies of the AAA Commercial Dispute Resolution
23 Procedures and the Supplementary Procedures for Consumer Related Disputes are attached as
24 Exhibits 9 and 10.

25 16. Many disputes between ATTM and its customers are resolved by means of a call
26 or e-mail to ATTM's customer care department, which is known at ATTM as the Office of the
27 President, making it unnecessary for the customer to file a Notice of Dispute. I have instructed
28 personnel in the Office of the President to contact the legal department (and me in particular)

1 whenever they become aware of a pattern of similar complaints so that I can review the
2 complaints and determine whether any changes to ATTM's practices are necessary.

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4 17. One way to measure how successful ATTM's customer care representatives are at
5 resolving customer concerns and complaints is to determine the dollar value of credits "manually
6 added" to customer accounts in response to the concerns and complaints. In August 2007, the
7 most recent month for which data are available, ATTM representatives provided about \$113
8 million in manual credits. For the 12-month period ending in August 2007, ATTM
9 representatives dispensed over \$1 billion in manual credits.

10 18. The cost of acquiring a new customer is quite high, averaging several hundred
11 dollars. This cost includes various marketing and administrative expenses and the cost of
12 subsidizing the new customer's wireless phone. Because of the high cost of acquiring a new
13 customer, and for other reasons, ATTM generally attempts to accommodate customers who have
14 complaints in order to retain them as customers. One of the most important metrics by which
15 ATTM and other wireless carriers measure their success is customer "churn," which is the
16 monthly rate at which customers terminate their relationships with the carrier. By reasonably
17 accommodating customers who have complaints, ATTM may reduce its churn.

18 19. Under ATTM's current arbitration provision and under previous provisions,
19 customers who seek to arbitrate their disputes are required to send ATTM a Notice of Dispute.

20 20. ATTM is often able to resolve customers' disputes to their satisfaction shortly
21 after receiving the Notice of the Dispute, thus obviating the need for the customer to commence
22 the arbitration.

23 21. Between January 1, 2007 and August 20, 2007, ATTM received over 450 Notice
24 of Dispute and Arbitration Initiation forms from its customers.

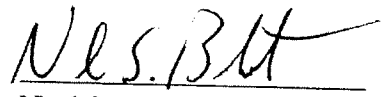
25 22. In contrast, over that same time period, fewer than 20 consumer class actions have
26 been brought against ATTM.

27 23. Under ATTM's current arbitration provision and the provision that it replaced,
28 subscribers have the option of bringing claims against ATTM in small claims court rather than in

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arbitration. In 2005 and 2006, about 850 such claims were brought against ATTM nationwide. The vast majority of small-claims-court actions against ATTM settled before judgment. While many of those claims either were settled or resulted in judgments for amounts exceeding \$1,000, many subscribers have successfully vindicated claims for small dollar amounts.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2007.


Neal S. Berinhout