

EXHIBIT 5

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: APPLE iPhone 3G AND 3GS MMS
MARKETING AND SALES PRACTICES
LITIGATION

MDL NO. 2116

2:09-md-2116

SECTION: J

THIS DOCUMENT RELATES TO ALL
CASES

JUDGE BARBIER

MAGISTRATE JUDGE WILKINSON

**DEFENDANT AT&T MOBILITY LLC'S OBJECTIONS TO PLAINTIFFS' NOTICE OF
DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)**

Defendant AT&T Mobility LLC ("ATTM") hereby objects to the plaintiffs' Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6), which plaintiffs served on ATTM on October 1, 2010.

GENERAL OBJECTIONS TO SCHEDULE OF TOPICS

ATTM objects to the Schedule of Topics specified in the notice of deposition subject to the general objections below, which are hereby incorporated into each of ATTM's objections. The failure specifically to refer to one or more general objections in a particular set of objections shall not be construed as a waiver of that objection. The raising of a specific objection, moreover, does not constitute a waiver of any other applicable objection.

1. ATTM objects to the Notice as imposing undue burden and expense, because it seeks information that is beyond the scope of or irrelevant to the question of whether plaintiffs' disputes are subject to arbitration, or information that is available through less intrusive and burdensome means. The sole issue before the Court at this time is whether plaintiffs' arbitration

agreements are enforceable under the Federal Arbitration Act. The terms of those agreements are available to plaintiffs in documents already in their possession; those documents speak for themselves. ATTM maintains that no further discovery is necessary to resolve its Motions to Compel Arbitration, and in any event the plaintiffs should be required to obtain additional information through the less intrusive and burdensome means of written discovery requests, which they have already undertaken.

2. ATTM objects to the Notice to the extent that it subverts the strong public policy favoring arbitration of the Federal Arbitration Act (“FAA”) because it is an attempt to conduct an impermissible fishing expedition in the hopes of identifying a ground for invalidating ATTM’s arbitration provision. *See, e.g., Creative Homes & Millwork, Inc. v. Hinkle*, 426 S.E.2d 480, 482 (N.C. Ct. App. 1993) (“A foundation of the arbitration process is that by mutual consent the parties have entered into an abbreviated adjudicative procedure, and to allow ‘fishing expeditions’ to search for ways to invalidate the award would tend to negate this policy.”) (internal quotation marks omitted); *Bank One, N.A. v. Coates*, 125 F. Supp. 2d 819, 828 (S.D. Miss. 2001) (“[I]t does not follow from the fact that defendant takes the position that he did not agree to arbitration that discovery is needed to determine whether the ostensible arbitration agreement is enforceable. The terms of the original agreement and amendment notification can be gleaned from the documents themselves.”), *aff’d*, 34 F. App’x 964 (5th Cir. 2002); *Gates v. Veravest Invs., Inc.*, No. 04-146, 2004 WL 1173145, at *10 (D. Or. May 25, 2004), *adopted*, 2004 WL 1418773 (D. Or. June 23, 2004) (denying further discovery because plaintiff had admitted to signing arbitration agreement); *Gold v. Deutsche A.G.*, No. 97-1304, 1998 WL 126058, at *3 (S.D.N.Y. Mar. 19, 1998) (compelling arbitration without ordering discovery because there were no factual allegations suggesting that the agreement was unenforceable), *appeal dismissed*, 199 F.3d 1322 (2d Cir. 1999). To obtain discovery for the purposes of invalidating an arbitration clause, the party “must present *a factually based predicate* that establishes what the party knows, what it expects to discover, and *why that information matters.*” *Ex parte Horton Family Hous., Inc.*, 882 So. 2d 838, 841 (Ala. 2003) (internal

quotation marks omitted) (emphases added). Because plaintiffs have not done so, any request for a deposition is wholly inappropriate.

3. ATTM objects to the Topics to the extent that they seek information not in ATTM's possession, custody, or control.

4. ATTM objects to the Topics to the extent that they seek the disclosure of information concerning documents, communications or other information protected from disclosure by the attorney-client privilege and/or work product doctrine, joint defense privilege, and/or any other similarly applicable privilege, doctrine or immunity.

5. ATTM objects to the Topics to the extent that they seek information that includes trade secrets or proprietary or confidential information, and ATTM will only provide such information after the parties have entered into a protective order approved by the Court.

6. ATTM objects to the Topics to the extent that they seek information on issues preempted by the FAA.

7. ATTM objects to the Topics to the extent that they seek information that is not related to the states in which the named plaintiffs reside.

8. ATTM objects to the Topics to the extent that they seek information relating to the service agreements of ATTM customers who are not named plaintiffs or members of the putative classes in these actions.

9. ATTM objects to each Topic that would require ATTM to undertake an unreasonable investigation and would cause ATTM to experience significant and unreasonable oppression, burden and/or expense in attempting to respond. Such Topics are harassing and abusive.

10. ATTM objects to each Topic to the extent that it seeks information regarding a time period that goes beyond the scope of the proceedings. All such Topics are patently overbroad and call for information that is not reasonably calculated to lead to the discovery of admissible evidence.

11. ATTM objects to the Topics to the extent that they seek information that is of

public record, well known to plaintiffs, and/or readily obtainable from sources within plaintiffs' own possession, custody, and control.

12. ATTM objects to the Topics to the extent that they seek information prohibited and/or restricted from disclosure by agreement, law, or regulation.

13. ATTM objects to the Topics to the extent that they seek information the discovery of which would be unduly invasive of the privacy of individuals or entities who are not parties to this action.

14. ATTM objects to the designated time and location designated in the Notice for the taking of the deposition as burdensome and inconvenient.¹

SPECIFIC OBJECTIONS TO SCHEDULE OF TOPICS

TOPIC NO. 1: The policies and procedures for sale of iPhone and presentation to buyers of the AT&T service contract contract [sic] at AT&T and Apple retail stores.

OBJECTIONS TO TOPIC NO. 1:

ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the terms "buyers," "presentation," "iPhone," and "AT&T service contract" are undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about agreements between ATTM and customers other than the named plaintiffs. ATTM objects to the extent that this Topic seeks information not in ATTM's possession, custody, or control. ATTM objects to the extent that this Topic seeks information that is not related to the states in which the named plaintiffs reside. ATTM objects to this Topic because, as described in the declarations submitted in support of ATTM's Motions to Compel Arbitration, and the exhibits thereto, the named plaintiffs in these actions (or the

¹ ATTM makes this objection to the designated time and location in order to preserve it. ATTM appreciates the representation by counsel for plaintiffs during the meet-and-confer process that they are willing to further confer with ATTM in order to identify a mutually agreeable time and location, if the Court denies the motion for a protective order that ATTM intends to file.

customers on whose accounts they receive wireless service from ATTM) indicated their acceptance of ATTM's terms of service when they subscribed to ATTM wireless service. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether the named plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether the named plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

TOPIC NO. 2: The policies and procedures for sale of iPhone and presentation to buyers of the AT&T service contract on the internet.

OBJECTIONS TO TOPIC NO. 2: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the terms "buyers," "presentation," "iPhone," and "AT&T service contract" are undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about agreements between ATTM and customers other than the named plaintiffs. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside. ATTM objects to this Topic because, as described in the declarations submitted in support of ATTM's Motions to Compel Arbitration, and the exhibits thereto, the named plaintiffs in these actions (or the customers on whose accounts they receive wireless service from ATTM) indicated their acceptance of ATTM's terms of service when they subscribed to ATTM wireless service. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

TOPIC NO. 3: Information concerning the names of customers, locations, and outcomes of arbitrations between iPhone customers and AT&T that have taken place pursuant to the

AT&T service contract within the last 3 years.

OBJECTIONS TO TOPIC NO. 3: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the terms “customers,” “outcomes,” and “AT&T service contract” are undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about disputes between ATTM and customers other than the named plaintiffs. ATTM further objects to this Topic to the extent that it seeks information the discovery of which would be unduly invasive of the privacy of individuals or entities who are not parties to this action, or that would violate confidentiality requirements imposed by law, regulation, or agreement. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether the named plaintiffs’ disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs’ arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

TOPIC NO. 4: The drafting, evolution, and content of AT&T arbitration clause over the last five years, whether for AT&T Wireless or AT&T Mobility, including the locations where the clauses were drafted.

OBJECTIONS TO TOPIC NO. 4: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the terms “evolution” and “AT&T arbitration clause” are undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about agreements other than those between ATTM and the named plaintiffs. ATTM objects insofar as AT&T Wireless is not a defendant in

the present action, nor do any of the named plaintiffs' claims relate to service provided by AT&T Wireless. ATTM objects because AT&T Wireless is not a party to any arbitration agreement at issue in this action. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside. ATTM objects to the Topic to the extent that it seeks information protected from disclosure by the attorney-client privilege and/or work product doctrine and/or any other similarly applicable privilege, doctrine or immunity. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether the named plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether the named plaintiffs' arbitration provisions are enforceable under the Federal Arbitration Act. This request clearly is seeking to engage in an impermissible fishing expedition for the purposes of unearthing grounds for challenging the plaintiffs' arbitration agreements with ATTM. ATTM further objects to the extent that it has already provided information within the scope of this topic in its responses to plaintiffs' First Interrogatories, Nos. 11 and 13.

TOPIC NO. 5: Discussions between AT&T and Apple regarding the exclusive arrangement of using AT&T as the sole service provider for iPhones.

OBJECTIONS TO TOPIC NO. 5: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM objects to the extent that preparing a 30(b)(6) witness to testify on this overly broad Topic would be unduly burdensome. ATTM further objects that the term "exclusive arrangement" is undefined and ambiguous. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether the named plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act. Discovery on the merits is wholly inappropriate at this time.

TOPIC NO. 6: Discussions between AT&T and Apple regarding AT&T's arbitration clause.

OBJECTIONS TO TOPIC NO. 6: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the term "AT&T's arbitration clause" is undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about agreements between ATTM and customers other than the named plaintiffs. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside. ATTM objects to the Topic to the extent that it seeks information protected from disclosure by the attorney-client privilege and/or work product doctrine, joint defense privilege, and/or any other similarly applicable privilege, doctrine or immunity. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

TOPIC NO. 7: The policies and procedures for activation of buyers' iPhones and agreement to AT&T's service agreement via either computer, telephone, or both.

OBJECTIONS TO TOPIC NO. 7: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM further objects that the terms "activation," "buyers," "iPhones," and "AT&T's service agreement" are undefined and ambiguous. ATTM objects to the extent that this Topic seeks information about agreements between ATTM and customers other than the named plaintiffs. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside.

ATTM objects to this Topic because, as described in the declarations submitted in support of ATTM's Motions to Compel Arbitration, and the exhibits thereto, the plaintiffs in these actions (or the customers on whose accounts they receive wireless service from ATTM) indicated their acceptance of ATTM's terms of service when they subscribed to ATTM wireless service. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

TOPIC NO. 8: The number of class action complaints filed against AT&T, the number of consumers alleged to be represented in those class actions, in response to which AT&T has argued arbitration should be compelled, and the number of class actions AT&T has filed against its customers.

OBJECTIONS TO TOPIC NO. 8: ATTM incorporates herein by reference its General Objections set forth above as if set forth fully herein. ATTM further objects to this Topic because it is vague and overly broad; goes beyond the temporal scope of this proceeding; and is not reasonably calculated to lead to the discovery of admissible evidence. ATTM objects to the extent that preparing a 30(b)(6) witness to testify on this overly broad Topic would be unduly burdensome. ATTM objects to the extent that this Topic seeks information about disputes between ATTM and customers other than the named plaintiffs. ATTM objects to the extent that this Topic seeks discovery that is not related to the states in which the named plaintiffs reside. ATTM further objects to this Topic because it seeks information equally available to plaintiffs and/or publicly available. ATTM also objects to the Topic because it seeks information that is beyond the scope of or irrelevant to the claims and defenses concerning whether plaintiffs' disputes are subject to arbitration. The sole issue before the Court at this time is whether plaintiffs' arbitration provisions are enforceable as to plaintiffs under the Federal Arbitration Act.

Respectfully submitted,

MAYER BROWN LLP

October 11, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2010, I served the foregoing by causing it to be sent to plaintiffs' attorneys for overnight delivery by third-party commercial carrier, addressed as follows:

Scott R. Bickford
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New Orleans, LA 70130

Archis A. Parasharami